# TITLE 15.—COMMERCE AND TRADE


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## Chapter 1.—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 755 of this title; title 42 section 6202; title 45 section 791; title 50 App. section 2158.

### § 1. Trusts, etc., in restraint of trade illegal; penalty.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1 to 7 of this title to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (As amended Dec. 21, 1974, Pub. L. 93–528, § 3, 88 Stat. 1708; Dec. 12, 1975, Pub. L. 94–145, § 2, 89 Stat. 801.)

AMENDMENTS

1975—Pub. L. 94–145 deleted from first sentence two provisos granting anti-trust exemption to State fair trade laws.

1974—Pub. L. 93–528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4 of Pub. L. 94–145 provided that: "The amendments made by sections 2 and 3 of this Act [to this section and section 45(a) of this title] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act [Dec. 12, 1975]."

SHORT TITLE

Section 1 of Pub. L. 94–145 provided: "That this Act [which amended this section and section 45(a) of this title and enacted provisions set out as a note under this section] may be cited as the 'Consumer Goods Pricing Act of 1975'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 6, 7, 28, 29, 30, 31, 62, 1012, 1013, 2311 of this title; title 7 section 225; title 33 section 1502; title 42 sections 2135, 5417, 5909; title 43 sections 970, 1654; title 46 section 814; title 49 sections 44, 45; title 50 App. section 1941a.

### § 2. Monopolizing trade a felony; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (As amended Dec. 21, 1974, Pub. L. 93–528, § 3, 88 Stat. 1708.)

AMENDMENTS

1974—Pub. L. 93–528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 4, 7, 28, 29, 30, 31, 62, 1012, 1013, 2311 of this title; title 7 section 225; title 12 sections 1828, 1849; title 33 section 1502; title 42 sections 2135, 5417, 5909; title 43 section 970; title 49 sections 44, 45.

### § 3. Trusts in Territories or District of Columbia illegal; combination a felony.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or both said punishments, in the discretion of the court. (As amended Dec. 21, 1974, Pub. L. 93–528, § 3, 88 Stat. 1708.)

AMENDMENTS

1974—Pub. L. 93–528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 4, 7, 28, 29, 30, 31, 62, 1012, 2311 of this title; title 7 section 225; title 33 section 1502; title 42 sections 2135, 5417, 5909; title 43 section 970; title 49 sections 44, 45.

§§ 4 to 7.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 28, 29, 2311 of this title; title 33 section 1502; title 42 sections 5417, 5909; title 49 sections 44, 45.

**§ 8. Trusts in restraint of import trade illegal; penalty.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 755 of this title; title 33 section 1502; title 42 sections 5417, 5959, 6202; title 45 section 791; title 50 App. section 2158.

**§ 9. Jurisdiction of courts; duty of United States attorneys; procedure.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 755 of this title; title 33 section 1502; title 42 sections 5417, 5959, 6202; title 45 section 791; title 50 App. section 2158.

**§ 12. Words defined.**

SECTIONS REFERRED TO IN OTHER SECTIONS

Sections 12–27 of this title, known as the Clayton Act, are referred to in section 755 of this title; title 33 section 1502; title 42 sections 5417, 5909, 6202; title 45 section 791; title 50 App. section 2158.

**§ 13. Discrimination in price, services, or facilities.**

SECTIONS REFERRED TO IN OTHER SECTIONS

Sections 13, 13a, 13b, and 21a of this title, known as the Robinson-Patman Antidiscrimination Act, are referred to in section 755 of this title; title 42 sections 5959, 6202; title 45 section 791; title 50 App. section 2158.

§§ 13a, 13b.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 42 sections 5959, 6202; title 45 section 791; title 50 App. section 2158.

**§ 16. Judgments.**

**(a) Prima facie evidence.**

A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws or by the United States under section 15a of this title, as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided,* That this section shall not apply to consent judgments or decrees entered before any testimony has been taken or to judgments or decrees entered in actions under section 15a of this title.

**(b) Consent judgments and competitive impact statements; publication in Federal Register; availability of copies to the public.**

Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) a description of the procedures available for modification of such proposal; and

(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

**(c) Publication of summaries in newspapers.**

The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

(i) a summary of the terms of the proposal for consent judgment,

(ii) a summary of the competitive impact statement filed under subsection (b) of this section,

(iii) and a list of the materials and documents under subsection (b) of this section which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

**(d) Consideration of public comments by Attorney General and publication of response.**

During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider

any written comments relating to the proposal for the consent judgment submitted under subsection (b) of this section. The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

**(e) Public interest determination.**

Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

**(f) Procedure for public interest determination.**

In making its determination under subsection (e) of this section, the court may—

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments including any objections filed with the United States under subsection (d) of this section concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

**(g) Filing of written or oral communications with the district court.**

Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b) of this section, each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

**(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement.**

Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 15a of this title nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

**(i) Suspension of limitations.**

Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect of every private right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued. (As amended Dec. 21, 1974, Pub. L. 93–528, § 2, 88 Stat. 1706.)

AMENDMENTS

1974—Subsecs. (b)–(h). Pub. L. 93–528 added subsecs. (b)–(h). Former subsec. (b) redesignated subsec. (i).

Subsec. (i). Pub. L. 93–528 redesignated former subsec. (b) as (i).

SHORT TITLE

Section 1 of Pub. L. 93–528 provided: "That this Act [amending this section, and sections 1, 2, 3, 28, and 29 of this title, section 401 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and sections 44, and 45 of Title 49, Transportation, and enacting provisions set out as a note under section 29 of this title] may be cited as the 'Antitrust Procedures and Penalties Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1012, 1013 of this title; title 7 section 225; title 42 section 2135.

**§ 21. Enforcement provisions.**

* * * * *

**(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court.**

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission or board for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition of certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission or board rendered upon such rehearing shall become final in the same manner as though no prior order of the commission or board had been rendered.

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CODIFICATION

Subsec. (j) of this section is set out in this Supplement to correct a typographical error.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21a, 1012, 1013 of this title; title 7 section 225; title 42 section 2135.

**§ 21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 5909, 6202; title 45 section 791; title 50 App. section 2158.

**§ 28. Expedition of actions by United States involving general public importance.**

In any civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff and equitable relief is sought, the Attorney General may file with the court, prior to the entry of final judgment, a certificate that, in his opinion, the case is of a general public importance. Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has as yet been designated, to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. (As amended Dec. 21, 1974, Pub. L. 93–528, § 4, 88 Stat. 1708.)

REFERENCES IN TEXT

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, referred to in the text, means the Sherman Act, which is classified to sections 1–7 of this title.

AMENDMENTS

1974—Pub. L. 93–528 struck out reference to the Act to regulate commerce approved Feb. 4, 1887, limited the application of the section to civil actions where equitable relief is sought, substituted provisions requiring filing of certificate with the court for provisions requiring filing of such certificate with the clerk of the court and requiring the clerk to furnish a copy of the certificate to the chief judge of the circuit of the circuit in which the case was pending, and further substituted "Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has yet been designated, to assign the case for hearing at the earliest practicable date and" for "Upon receipt of the copy of such certificate, it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and".

**§ 29. Appeals.**

**(a) Court of Appeals; review by Supreme Court.**

Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of Title 28. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of Title 28 but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of Title 28.

**(b) Direct Appeals to Supreme Court.**

An appeal from a final judgment pursuant to subsection (a) of this section shall lie directly to the Supreme Court, if, upon application of a party filed within fifteen days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within thirty days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a) of this section. (As amended Dec. 21, 1974, Pub. L. 93–528, § 5, 88 Stat. 1709.)

REFERENCES IN TEXT

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, referred to in the text, means the Sherman Act, which is classified to sections 1–7 of this title.

AMENDMENTS

1974—Pub. L. 93–528 substituted provisions for appeals to the court of appeals from civil actions in district courts where equitable relief is sought, review by the Supreme Court of judgments of courts of appeals, and for direct appeals to the Supreme Court of cases involving general public importance, for provisions that appeals from final judgments of district courts lie to the Supreme Court only.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 7 of Pub. L. 93–528 provided that: "The amendment made by section 5 of this Act [amending this section and section 45 of Title 49, Transportation] shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act [Dec. 21, 1974]. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act."

## Chapter 2.—FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PREVENTION OF UNFAIR METHODS OF COMPETITION

### FEDERAL TRADE COMMISSION

Sec.

57a. Unfair or deceptive acts or practices rulemaking proceedings [New].
(a) Authority of Commission to prescribe rules and general statements of policy.
(b) Procedures applicable.
(c) Informal hearing procedure.
(d) Statement of basis and purpose accompanying rules; "Commission" defined; judicial review of amendment or repeal of rule; violation of rules.
(e) Judicial review; petition; jurisdiction and venue; rulemaking record; additional submissions and presentations; scope of review and relief; review by Supreme Court; additional remedies.
(f) Bank unfair or deceptive acts or practices; promulgation of regulations by Board of Governors of Federal Reserve System; agency enforcement and compliance proceedings; effect of violations; power of other Federal agencies unaffected; reporting requirements.
(g) Exemptions and stays from application of rules; procedures.
(h) Compensation for attorney fees, expert witness fees, etc., incurred by persons in rulemaking proceedings; aggregate amount payable in any fiscal year.
57b. Civil actions for violations of rules and cease and desist orders respecting unfair or deceptive acts or practices [New].
(a) Suits by Commission against persons, partnerships, or corporations; jurisdiction; relief for dishonest or fraudulent acts.
(b) Nature of relief available.
(c) Conclusiveness of findings of Commission in cease and desist proceedings; notice of judicial proceedings to injured persons, etc.
(d) Time for bringing of actions.
(e) Availability of additional Federal or State remedies; other authority of Commission unaffected.
57c. Authorization of appropriations [New].

SECTIONS REFERRED TO IN OTHER SECTIONS

Sections 41 to 58 of this title (Federal Trade Commission Act) are referred to in sections 755, 1691c, 2006, 2101, 2103, 2106, 2311 of this title; title 19 section 2485; title 33 section 1502; title 42 sections 5417, 5909, 6202, 6294; title 45 section 791; title 50 App. section 2158.

### FEDERAL TRADE COMMISSION

**§ 44. Definitions.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 756 of this title; title 19 section 2485.

**§ 45. Unfair methods of competition unlawful; prevention by Commission.**

**(a) Declaration of unlawfulness; power to prohibit unfair practices.**

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(2) The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

**(b) Proceeding by Commission; modifying and setting aside orders.**

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by sections 41 to 46 and 47 to 58 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals in the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no

such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

* * * * *

**(*l*) Penalty for violation of order; injunctions and other appropriate equitable relief.**

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

**(m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts or practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure.**

(1)(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this chapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1) of this section) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) of this section that any act or practice is unfair or deceptive, and issues a final cease and desist order with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1) of this section, each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall taken into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo.

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court. (As amended Nov. 16, 1973, Pub. L. 93–153, title IV, § 408(c)(d), 87 Stat. 591, 592; Jan. 4, 1975, Pub. L. 93–637, title II, §§ 201(a), 204(b), 205(a), 88 Stat. 2193, 2200; Dec. 12, 1975, Pub. L. 94–145, § 3, 89 Stat. 801.)

AMENDMENTS

1975—Pub. L. 93–637, § 201(a), substituted "in or affecting commerce" for "in commerce" wherever appearing therein.

Subsec. (a). Pub. L. 94–145 deleted pars. (2) to (5) permitting fair trade pricing of articles for retail sale and State enactment of nonsigner provisions, and redesignated former par. (6) as (2).

Subsec. (m). Pub. L. 93–637, §§ 204(b), 205(a), added subsec. (m). Former subsec. (m), relating to the election by the Commission to appear in its own name after notifying and consulting with and giving the Attorney General 10 days to take the action proposed by the Commission, was struck out.

1973—Subsec. (*l*). Pub. L. 93–153, § 408(c), raised the maximum civil penalty for each violation to $10,000 and added provisions empowering the United States District Courts to grant mandatory injunctions and such other and further equitable relief as they might deem appropriate for the enforcement of final Commission orders.

Subsec. (m). Pub. L. 93–153, § 408(d), added subsec. (m).

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment of subsec. (a) by Pub. L. 94–145 effective upon expiration of ninety-day period beginning on Dec. 12, 1975, see section 4 of Pub. L. 94–145, set out as a note under section 1 of this title.

Section 205(b) of Pub. L. 93–637 provided that: "The amendment made by subsection (a) of this section [enacting provisions of subsec. (m) relating to civil penalties] shall not apply to any violation, act, or practice to the extent that such violation, act, or practice occurred before the date of enactment of this Act [Jan. 4, 1975]."

Repeal of subsec. (m) relating to court appearances of Commission by section 204(b) of Pub. L. 93–637 not applicable to any civil action commenced before Jan. 4, 1975, see section 204(c) of Pub. L. 93–637, set out as a note under section 56 of this title.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE COVERING GRANT OF DISTRICT SUBPENA ENFORCEMENT AUTHORITY AND AUTHORITY TO GRANT PRELIMINARY INJUNCTIVE RELIEF

Section 408 (a) and (b) of Pub. L. 93–153 provided that:

"(a)(1) The Congress hereby finds that the investigative and law enforcement responsibilities of the Federal Trade Commission have been restricted and hampered because of inadequate legal authority to enforce subpenas and to seek preliminary injunctive relief to avoid unfair competitive practices.

"(2) The Congress further finds that as a direct result of this inadequate legal authority significant delays have occurred in a major investigation into the legality of the structure, conduct, and activities of the petroleum industry, as well as in other major investigations designed to protect the public interest.

"(b) It is the purpose of this Act [amending this section and sections 46, 53, and 56 of this title] to grant the Federal Trade Commission the requisite authority to insure prompt enforcement of the laws the Commission administers by granting statutory authority to directly enforce subpenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 44, 46, 48, 49, 50, 51, 52, 53, 56, 57, 57a, 57b, 58, 1681, 2006, 2310 of this title; title 7 section 193; title 21 section 347b; title 39 section 3009; title 42 sections 2135, 6303.

**§ 46. Additional powers of Commission.**

The Commission shall also have power—

**(a) Investigation of persons, partnerships, or corporations.**

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership or corporation engaged in or whose business affects commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

**(b) Reports of persons, partnerships, and corporations.**

To require, by general or special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting banks and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

* * * * *

**(g) Classification of corporations; regulations.**

From time to time classify corporations and (except as provided in section 57a(a)(2) of this title) to make rules and regulations for the purpose of carrying out the provisions of sections 41 to 46 and 47 to 58 of this title.

**(h) Investigations of foreign trade conditions; reports.**

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

*Provided,* That the exception of "banks and common carriers subject to the Act to regulate commerce" from the Commission's powers defined in clauses (a) and (b) of this section, shall not be construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged or is engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce. (As amended Nov. 16, 1973, Pub. L. 93–153, title IV, § 408(e), 87 Stat. 592; Jan. 4, 1975, Pub. L. 93–637, title II, §§ 201(b), 202(b), 203(a), 88 Stat. 2193, 2198.)

REFERENCES IN TEXT

The Act to regulate commerce, referred to in the proviso following subsec. (h), consists, as provided by section 44 of this title, of the Interstate Commerce Act, which is classified to chapters 1, 8, 12, 13 and 19 of Title 49, Transportation, and the Communications Act of 1934, which is classified to chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–637, §§ 201(b), 203(a)(1), substituted "in or whose business affects commerce" for "in commerce", "person, partnership, or corporation" for "corporation", and "persons, partnerships, and corporations" for "corporations and to individuals, associations, and partnerships".

Subsec. (b). Pub. L. 93–637, §§ 201(b), 203(a)(2), substituted "in or whose business affects commerce" for "in commerce", "special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting" for "special orders, corporations engaged in or whose business affects commerce, excepting", and "respective persons, partnerships, and corporations" for "respective corporations".

Subsec. (g). Pub. L. 93–637, § 202(b), added "(except as provided in section 57a(a)(2) of this title)" preceding "to make rules and regulations".

Pub. L. 93–637, § 203(a)(3), in the proviso following subsec. (h), substituted "any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations," for "any such corporation to the extent that such action is necessary to the investigation of any corporation, group of corporations,".

1973—Pub. L. 93–153 added proviso following subsec. (h) that the Commission's investigatory powers to gather and compile information, investigate, and require reports or answers is not curtailed as regards banks and common carriers when the investigation in question is an investigation of a corporation, group of corporations, or industry not engaged or engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce notwithstanding provisions excepting banks and common carriers subject to the Act from the exercise of the Commission's power to investigate and require reports from corporations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45, 48, 49, 50, 51, 56, 57, 58, 756 of this title; title 7 sections 222, 2146; title 21 sections 467d, 677, 1051; title 42 section 2135.

**§ 49. Documentary evidence; depositions; witnesses.**

For the purposes of sections 41 to 46 and 47 to 58 of this title the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

* * * * *

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation, issue an order requiring such person, partnership, or corporation, to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person, partnership, or corporation to comply with the provisions of sections 41 to 46 and 47 to 58 of this title or any order of the Commission made in pursuance thereof.

* * * * *

(As amended Jan. 4, 1975, Pub. L. 93–637, title II, § 203(b), 88 Stat. 2198.)

AMENDMENTS

1975—First par. Pub. L. 93–637, § 203(b)(1), substituted "person, partnership, or corporation" for "corporation".

Third par. Pub. L. 93–637, § 203(b)(2), substituted "person, partnership, or corporation" for "corporation" wherever appearing therein.

Fourth par. Pub. L. 93–637, § 203(b)(3), substituted "person, partnership, or corporation" for "person or corporation".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44, 45, 46, 48, 50, 51, 56, 57, 58, 756 of this title; title 7 sections 222, 610, 2046; title 21 sections 467d, 677, 1051; title 26 section 5274; title 29 sections 177, 209, 308, 521, 1134; title 33 section 944; title 50 App. section 1983.

**§ 50. Offenses and penalties.**

* * * * *

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under sections 41 to 46 and 47 to 58 of this title, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, partnership, or corporation subject to said sections or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records or memoranda of all facts and transactions appertaining to the business of such person, partnership, or corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such person, partnership, or corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such person, partnership, or corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any persons, partnership, or corporation required by sections 41 to 46 and 47 to 58 of this title to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

* * * * *

(As amended Jan. 4, 1975, Pub. L. 93–637, title II, § 203(c), 88 Stat. 2199.)

AMENDMENTS

1975—Second par. Pub. L. 93–637, § 203(c)(1), substituted "person, partnership, or corporation" for "corporation" wherever appearing therein.

Third par. Pub. L. 93–637, § 203(c)(2), substituted "If any persons, partnership, or corporation" for "If any corporation", and "in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business" for "in the district where the corporation has its principal office or in any district in which it shall do business".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44, 45, 46, 48, 49, 51, 57, 58, 756 of this title; title 7 sections 222, 610, 2046; title 21 sections 467d, 677, 1051; title 26 section 5274; title 29 sections 177, 209, 308, 521, 1134; title 33 section 944; title 42 section 2135; title 50 App. section 1983.

**§ 52. Dissemination of false advertisements.**

**(a) Unlawfulness.**

It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in or having an effect upon commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce of food, drugs, devices, or cosmetics.

**(b) Unfair or deceptive act or practice.**

The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 45 of this title. (As amended Jan. 4, 1975, Pub. L. 93–637, title II, § 201(c), 88 Stat. 2193.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–637 substituted "in or having an effect upon commerce," for "in commerce".

Subsec. (b). Pub. L. 93–637 substituted "in or affecting Commerce" for "in commerce".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44, 45, 46, 48, 49, 50, 51, 54, 55, 57, 58 of this title; title 21 section 352; title 42 section 2135.

**§ 53. Same; temporary injunction.**

* * * * *

**(b) Temporary restraining orders; preliminary injunctions.**

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminay injunction may be granted without bond: *Provided, however,* That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

**(c) Exception of periodical publications.**

Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement,

the court shall exclude such issue from the operation of the restraining order or injunction. (As amended Nov. 16, 1973, Pub. L. 93–153, title IV, § 408(f), 87 Stat. 592.)

AMENDMENTS

1973—Subsec. (b). Pub. L. 93–153 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 93–153 redesignated former subsec. (b) and (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44, 45, 46, 48, 49, 50, 51, 55, 56, 57, 58 of this title; title 21 section 352; title 42 section 2135.

**§ 56. Commencement, defense, intervention and supervision of litigation and appeal by Commission or Attorney General; procedure for exercise of authority to litigate or appeal; certification by Commission to Attorney General for criminal proceedings.**

(a) (1) Except as otherwise provided in paragraph (2) or (3), if—

(A) before commencing, defending, or intervening in, any civil action involving this chapter (including an action to collect a civil penalty) which the Commission, or the Attorney General on behalf the Commission, is authorized to commence, defend, or intervene in, the Commission gives written notification and undertakes to consult with the Attorney General with respect to such action; and

(B) the Attorney General fails within 45 days after receipt of such notification to commence, defend, or intervene in, such action;

the Commission may commence, defend, or intervene in, and supervise the litigation or, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose.

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) under section 53 of this title (relating to injunctive relief);

(B) under section 57b of this title (relating to consumer redress);

(C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 45 of this title; or

(D) under the second paragraph of section 49 of this title (relating to enforcement of a subpena) and under the fourth paragraph of such section (relating to compliance with section 46 of this title);

the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose, unless the Commission authorizes the Attorney General to do so. The Commission shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

(3)(A) If the Commission makes a written request to the Attorney General, within the 10-day period which begins on the date of the entry of the judgment in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), to represent itself through any of its attorneys designated by it for such purpose before the Supreme Court in such action, it may do so, if—

(i) the Attorney General concurs with such request; or

(ii) the Attorney General, within the 60-day period which begins on the date of the entry of such judgment—

(a) refuses to appeal or file a petition for writ of certiorari with respect to such civil action, in which case he shall give written notification to the Commission of the reasons for such refusal within such 60-day period; or

(b) the Attorney General fails to take any action with respect to the Commission's request.

(B) In any case where the Attorney General represents the Commission before the Supreme Court in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), the Attorney General may not agree to any settlement, compromise, or dismissal of such action, or confess error in the Supreme Court with respect to such action, unless the Commission concurs.

(C) For purposes of this paragraph (with respect to representation before the Supreme Court), the term "Attorney General" includes the Solicitor General.

(4) If, prior to the expiration of the 45-day period specified in paragraph (1) of this section or a 60-day period specified in paragraph (3), any right of the Commission to commence, defend, or intervene in, any such action or appeal may be extinguished due to any procedural requirement of any court with respect to the time in which any pleadings, notice of appeal, or other acts pertaining to such action or appeal may be taken, the Attorney General shall have one-half of the time required to comply with any such procedural requirement of the court (including any extension of such time granted by the court) for the purpose of commencing, defending, or intervening in the civil action pursuant to paragraph (1) or for the purpose of refusing to appeal or file a petition for writ of certiorari and the written notification or failing to take any action pursuant to paragraph 3(A)(ii).

(5) The provisions of this subsection shall apply notwithstanding chapter 31 of Title 28, or any other provision of law.

(b) Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this chapter, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought. (As amended Nov. 16, 1973, Pub. L. 93–153, title IV, § 408(g), 87 Stat. 592; Jan. 4, 1975, Pub. L. 93–637, title II, § 204(a), 88 Stat. 2199.)

AMENDMENTS

1975—Pub. L. 93–637 substituted provisions authorizing the Commission at its election to appear in court by its own name and designate its attorneys for such purpose, for provisions relating to the certification of facts by the Commission to the Attorney General who brought the appropriate proceedings, or, after compliance with section 45(m) of this title, itself brought the appropriate proceedings.

1973—Pub. L. 93–153 added provisions authorizing the Federal Trade Commission to itself cause appropriate proceedings to be brought after compliance with the requirements of section 45(m) of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 204(c) of Pub. L. 93–637 provided that "The amendment and repeal made by this section [amending this section and repealing section 45(m) of this title] shall not apply to any civil action commenced before the date of enactment of this Act [Jan. 4, 1975]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44, 45, 46, 48, 49, 50, 51, 57, 58 of this title; title 21 section 352; title 28 section 1407; title 42 section 2135.

**§ 57a. Unfair or deceptive acts or practices rulemaking proceedings.**

**(a) Authority of Commission to prescribe rules and general statements of policy.**

(1) The Commission may prescribe—

(A) interpretive rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title). Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.

(2) The Commission shall have no authority under this chapter, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title). The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting commerce.

**(b) Procedures applicable.**

When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of Title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (1) publish a notice of proposed rulemaking stating

with particularity the reason for the proposed rule; (2) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (3) provide an opportunity for an informal hearing in accordance with subsection (c) of this section, and (4) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in subsection (e)(1)(B) of this section), together with a statement of basis and purpose.

**(c) Informal hearing procedure.**

The Commission shall conduct any informal hearings required by subsection (b)(3) of this section in accordance with the following procedure:

(1) Subject to paragraph (2) of this subsection, an interested person is entitled—

(A) to present his position orally or by documentary submission (or both), and

(B) if the Commission determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under paragraph (2)(B)) such cross-examination of persons as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to such issues.

(2) The Commission may prescribe such rules and make such rulings concerning proceedings in such hearings as may tend to avoid unnecessary costs or delay. Such rules or rulings may include (A) imposition of reasonable time limits on each interested person's oral presentations, and (B) requirements that any cross-examination to which a person may be entitled under paragraph (1) be conducted by the Commission on behalf of that person in such manner as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to disputed issues of material fact.

(3)(A) Except as provided in subparagraph (B), if a group of persons each of whom under paragraphs (1) and (2) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Commission to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings (i) limiting the representation of such interest, for such purposes, and (ii) governing the manner in which such cross-examination shall be limited.

(B) When any person who is a member of a group with respect to which the Commission has made a determination under subparagraph (A) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of subparagraph (A) the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if (i) he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (ii) the Commission determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(4) A verbatim transcript shall be taken of any oral presentation, and cross-examination, in an informal hearing to which this subsection applies. Such transcript shall be available to the public.

**(d) Statement of basis and purpose accompanying rule; "Commission" defined; judicial review of amendment or repeal of rule; violation of rules.**

(1) The Commission's statement of basis and purpose to accompany a rule promulgated under subsection (a)(1)(B) of this section shall include (A) a statement as to the prevalence of the acts or practices treated by the rule; (B) a statement as to the manner and context in which such acts or practices are unfair or deceptive; and (C) a statement as to the economic effect of the rule, taking into account the effect on small business and consumers.

(2)(A) The term "Commission" as used in this subsection and subsections (b) and (c) of this section includes any person authorized to act in behalf of the Commission in any part of the rulemaking proceeding.

(B) A substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) of this section shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection. An exemption under subsection (g) of this section shall not be treated as an amendment or repeal of a rule.

(3) When any rule under subsection (a)(1)(B) of this section takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 45(a)(1) of this title, unless the Commission otherwise expressly provides in such rule.

**(e) Judicial review; petition; jurisdiction and venue; rulemaking record; additional submission and presentations; scope of review and relief; review by Supreme Court; additional remedies.**

(1)(A) Not later than 60 days after a rule is promulgated under subsection (a)(1)(B of this section by the Commission, any interested person (including a consumer or consumer organization) may file a petition, in the United States Court of Appeals for the District of Columbia circuit or for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The provisions of section 2112 of Title 28 shall apply to the filing of the rulemaking record of proceedings on which the Commission based its rule and to the transfer of proceedings in the courts of appeals.

(B) For purposes of this section, the term "rulemaking record" means the rule, its statement of basis and purpose, the transcript required by subsection (c)(4) of this section, any written submissions, and any other information which the Commission considers relevant to such rule.

(2) If the petitioner or the Commission applies to the court for leave to make additional oral submissions or written presentations and shows to the satisfaction of the court that such submissions and presentations would be material and that there were

reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Commission, the court may order the Commission to provide additional opportunity to make such submissions and presentations. The Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule, and the rule's statement of basis of purpose, with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(3) Upon the filing of the petition under paragraph (1) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of Title 5 and to grant appropriate relief, including interim relief, as provided in such chapter. The court shall hold unlawful and set aside the rule on any ground specified in subparagraphs (A), (B), (C), or (D) of section 706(2) of Title 5 (taking due account of the rule of prejudicial error), or if—

(A) the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record (as defined in paragraph (1)(B) of this subsection) taken as a whole, or

(B) the court finds that—

(i) a Commission determination under subsection (c) of this section that the petitioner is not entitled to conduct cross-examination or make rebuttal submissions, or

(ii) a Commission rule or ruling under subsection (c) of this section limiting the petitioner's cross-examination or rebuttal submissions,

has precluded disclosure of disputed material facts which was necessary for fair determination by the Commission of the rulemaking proceeding taken as a whole.

The term "evidence", as used in this paragraph, means any matter in the rulemaking record.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of Title 28.

(5)(A) Remedies under the preceding paragraphs of this subsection are in addition to and not in lieu of any other remedies provided by law.

(B) The United States Courts of Appeal shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of a rule prescribed under subsection (a)(1)(B) of this section, if any district court of the United States would have had jurisdiction of such action but for this subparagraph. Any such action shall be brought in the United States Court of Appeals for the District of Columbia circuit, or for any circuit which includes a judicial district in which the action could have been brought but for this subparagraph.

(C) A determination, rule, or ruling of the Commission described in paragraph (3)(B)(i) or (ii) may be reviewed only in a proceeding under this subsection and only in accordance with paragraph (3)(B). Section 706(2)(E) of Title 5 shall not apply to any rule promulgated under subsection (a)(1)(B) of this section. The contents and adequacy of any statement required by subsection (b)(4) of this section shall not be subject to judicial review in any respect.

**(f) Bank unfair or deceptive acts or practices; promulgation of regulations by Board of Governors of Federal Reserve System; agency enforcement and compliance proceedings; effect of violations; power of other Federal agencies unaffected; reporting requirements.**

(1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by banks, each agency specified in paragraph (2) of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks subject to its jurisdiction. The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Whenever the Commission prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect such Board shall promulgate substantially similar regulations prohibiting acts or practices of banks which are substantially similar to those prohibited by rules of the Commission and which impose substantially similar requirements, unless such Board finds that (A) such acts or practices of banks are not unfair or deceptive, or (B) that implementation of similar regulations with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board, and publishes any such finding, and the reasons therefor, in the Federal Register.

(2) Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of Title 12, in the case of—

(A) national banks and banks operating under the code of law for the District of Columbia, by the division of consumer affairs established by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than banks referred to in subparagraph (A)) by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)), by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation.

(3) For the purpose of the exercise by any agency referred to in paragraph (2) of its powers under any Act referred to in that paragraph, a violation of any regulation prescribed under this subsection shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any regulation prescribed under

this subsection, any other authority conferred on it by law.

(4) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this subsection does not impair the authority of any other agency designated in this subsection to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

(5) Each agency exercising authority under this subsection shall transmit to the Congress not later than March 15 of each year a detailed report on its activities under this paragraph during the preceding calendar year.

**(g) Exemptions and stays from application of rules; procedures.**

(1) Any person to whom a rule under subsection (a)(1)(B) of this section applies may petition the Commission for an exemption from such rule.

(2) If, on its own motion or on the basis of a petition under paragraph (1), the Commission finds that the application of a rule prescribed under subsection (a)(1)(B) of this section to any person or class or persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule. Section 553 of Title 5 shall apply to action under this paragraph.

(3) Neither the pendency of a proceeding under this subsection respecting an exemption from a rule, nor the pendency of judicial proceedings to review the Commission's action or failure to act under this subsection, shall stay the applicability of such rule under subsection (a)(1)(B) of this section.

**(h) Compensation for attorney fees, expert witness fees, etc., incurred by persons in rulemaking proceedings; aggregate amount payable in any fiscal year.**

(1) The Commission may, pursuant to rules prescribed by it, provide compensation for reasonable attorneys fees, expert witness fees, and other costs of participating in a rulemaking proceeding under this section to any person (A) who has, or represents, an interest (i) which would not otherwise be adequately represented in such proceeding, and (ii) representation of which is necessary for a fair determination of the rulemaking proceeding taken as a whole, and (B) who is unable effectively to participate in such proceeding because such person cannot afford to pay costs of making oral presentations, conducting cross-examination, and making rebuttal submissions in such proceeding.

(2) The aggregate amount of compensation paid under this subsection in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either (A) would be regulated by the proposed rule, or (B) represent persons who would be so regulated, may not exceed 25 percent of the aggregate amount paid as compensation under this subsection to all persons in such fiscal year.

(3) The aggregate amount of compensation paid to all persons in any fiscal year under this subsection may not exceed $1,000,000. (Sept. 26, 1914, ch. 311, § 18, as added Jan. 4, 1975, Pub. L. 93–637, title II, § 202(a), 88 Stat. 2193.)

APPLICABILITY OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES RULEMAKING PROCEDURES TO RULES CLASSIFYING CORPORATIONS PROMULGATED PRIOR TO JANUARY 4, 1975

Section 202(c) of Pub. L. 93–637 provided that:

"(1) The amendments made by subsections (a) and (b) of this section [adding section 57a of this title and amending section 46(g) of this title] shall not affect the validity of any rule which was promulgated under section 6(g) of the Federal Trade Commission Act [section 46(g) of this title] prior to the date of enactment of this section [Jan. 4, 1975]. Any proposed rule under section 6(g) of such Act with respect to which presentation of data, views, and arguments was substantially completed before such date may be promulgated in the same manner and with the same validity as such rule could have been promulgated had this section not been enacted.

"(2) If a rule described in paragraph (1) of this subsection is valid and if section 18 of the Federal Trade Commission Act [section 57a of this title] would have applied to such rule had such rule been promulgated after the date of enactment of this Act, any substantive change in the rule after it has been promulgated shall be made in accordance with such section 18."

STUDY, EVALUATION AND REPORT BY FEDERAL TRADE COMMISSION AND ADMINISTRATIVE CONFERENCE OF UNITED STATES ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES RULEMAKING PROCEDURES

Section 202(d) of Pub. L. 93–637 provided that: "The Federal Trade Commission and the Administrative Conference of the United States shall each conduct a study and evaluation of the rulemaking procedures under section 18 of the Federal Trade Commission Act [this section] and each shall submit a report of its study (including any legislative recommendations) to the Congress not later than 18 months after the date of enactment of this Act [Jan. 4, 1975]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 2006, 2309 of this title; title 42 section 6306.

**§ 57b. Civil actions for violations of rules and cease and desist orders respecting unfair or deceptive acts or practices.**

**(a) Suits by Commission against persons, partnerships, or corporations; jurisdiction; relief for dishonest of fraudulent acts.**

(1) If any person, partnership, or corporation violates any rule under this chapter respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 45(a) of this title), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) of this section in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 45(a)(1) of this title) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b) of this section.

**(b) Nature of relief available.**

The court in an action under subsection (a) of this section shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this subsection is intended to authorize the imposition of any exemplary or punitive damages.

**(c) Conclusiveness of findings of Commission in cease and desist proceedings; notice of judicial proceedings to injured persons, etc.**

(1) If (A) a cease and desist order issued under section 45(b) of this title has become final under section 45(g) of this title with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding under section 45(b) of this title with repect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of section 45(g)(1) of this title, in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and corporations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

**(d) Time for bringing of actions.**

No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) of this section relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) of this section relates; except that if a cease and desist order with respect to any person's, partnership's or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 45(b) of this title which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

**(e) Availability of additional Federal or State remedies; other authority of Commission unaffected.**

Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law. (Sept. 26, 1914, ch. 311, § 19, as added Jan. 4, 1975, Pub. L. 93–637, title II, § 206(a), 88 Stat. 2201.)

EFFECTIVE DATE

Section 206(b) of Pub. L. 93–637 provided that:

"The amendment made by subsection (a) of this section [enacting this section] shall not apply to—

"(1) any violation of a rule to the extent that such violation occurred before the date of enactment of this Act [Jan. 4, 1975], or

"(2) any act or practice with respect to which the Commission issues a cease-and-desist order, to the extent that such act or practice occurred before the date of enactment of this Act, unless such order was issued after such date and the person, partnership or corporation against whom such an order was issued had been notified in the complaint, or in the notice or order attached thereto, that consumer redress may be sought."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 56 of this title.

**§ 57c. Authorization of appropriations.**

There are authorized to be appropriated to carry out the functions, powers, and duties of the Federal Trade Commission not to exceed $42,000,000 for the fiscal year ending June 30, 1975; not to exceed $46,000,000 for the fiscal year ending June 30, 1976; and not to exceed $50,000,000 for the fiscal year ending in 1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law. (Sept. 26, 1914, ch. 311, § 20, as added Jan. 4, 1975, Pub. L. 93–637, title II, § 207, 88 Stat. 2203.)

**§ 58. Short title.**

CODIFICATION

Section 18 of act Sept. 26, 1914, ch. 311, as added Mar. 21, 1938, Ch. 49, § 4, 52 Stat. 114, was renumbered 21 by Pub. L. 93–637, title II, § 202(a), Jan. 4, 1975, 88 Stat. 2193.

## Chapter 2A.—SECURITIES AND TRUST INDENTURES

### SUBCHAPTER I.—DOMESTIC SECURITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 77ccc, 77ddd, 77fff, 77ggg, 77hhh, 77vvv, 77www, 77zzz, 78m, 78n, 78o, 78s, 78u, 79t, 79u, 80a–2, 80a–8, 80a–9, 80a–12, 80a–14, 80a–24, 80a–34, 80a–37, 80a–49, 80b–3 of this title; title 11 section 205; title 35 section 646; title 43 section 1625.

SUBCHAPTER REFERRED TO IN D.C. CODE

This subchapter is referred to in sections 29–1112, 35–1903 of the District of Columbia Code.

**§ 77b. Definitions.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 1002.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 1–1182 of the District of Columbia Code.

**§ 77c. Exempted securities.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 1425b, 2290.

**§ 77d. Exempted transactions.**

The provisions of section 77e of this title shall not apply to—

* * * * *

(5) (A) Transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and participation interests in such notes—

(i) where such securities are originated by a savings and loan association, savings bank, commercial bank, or similar banking institution which is supervised and examined by a Federal or State authority, and are offered and sold subject to the following conditions:

(a) the minimum aggregate sales price per purchaser shall not be less than $250,000;

(b) the purchaser shall pay cash either at the time of the sale or within sixty days thereof; and

(c) each purchaser shall buy for his own account only; or

(ii) where such securities are originated by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 1709 and 1715b of Title 12 and are offered or sold subject to the three conditions specified in subpargraph (A) (i) to any institution described in such subparagraph or to any insurance company subject to the supervision of the insurance commissioner, or any agency or officer performing like function, of any State or territory of the United States or the District of Columbia, or the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.

(B) Transactions between any of the entities described in subparagraph (A) (i) or (A) (ii) involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years, where the seller of the foregoing securities pursuant to any such contract is one of the parties described in subparagraph (A) (i) or (A) (ii) who may originate such securities and the purchaser of such securities pursuant to any such contract is any institution described in subparagraph (A) (i) or any insurance company described in subparagraph (A) (ii), the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or the Government National Mortgage Association and where the foregoing securities are subject to the three conditions for sale set forth in subparagraphs (A) (i) (a) through (c).

(C) The exemption provided by subparagraphs (A) and (B) shall not apply to resales of the securities acquired pursuant thereto, unless each of the conditions for sale contained in subparagraphs (A) (i) (a) through (c) are satisfied.

(As amended June 4, 1975, Pub. L. 94–29, § 30, 89 Stat. 169.)

AMENDMENTS

1975—Par. (5). Pub. L. 94–29 added par. (5).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a–24 of this title; title 11 section 205.

**§ 77*l*. Civil liabilities arising in connection with prospectuses and communications.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77m, 77o, 77eee, 78d–1 of this title.

**§ 77q. Fraudulent interstate transactions.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1932.

**§ 77v. Jurisdiction of offenses and suits.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1932.

**§ 77x. Penalties.**

Any person who willfully violates any of the provisions of this subchapter, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this subchapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both. (As amended June 4, 1975, Pub. L. 94–29, § 27(a), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "$10,000" for "$5,000".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77eee of this title; title 7 section 1932.

## SUBCHAPTER III.—TRUST INDENTURES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 78u, 80a–2, 80a–37, 80a–49, 80b–2 of this title; title 25 section 646.

**§ 77ddd. Exempted securities and transactions.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 2290.

**§ 77yyy. Penalties.**

Any person who willfully violates any provision of this subchapter or any rule, regulation, or order thereunder, or any person who willfully, in any application, report, or document filed or required to be filed under the provisions of this subchapter or any rule, regulation, or order thereunder, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or

both. (As amended June 4, 1975, Pub. L. 94–29, § 27(d), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "$10,000" for $5,000".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77eee of this title.

## Chapter 2B.—SECURITIES EXCHANGES

Sec.

78k–1. National market system for securities; securities information processors [New].
(a) Congressional findings; facilitating establishment of national market system for securities; designation of qualified securities.
(b) Securities information processors; registration; wihtdrawal of registration; access to services; censure; suspension or revocation of registration.
(c) Rules and regulations covering use of mails or other means or instrumentalities of interstate commerce; reports of purchase or sale of qualified securities; limiting registered securities transactions to national securities exchanges.
(d) National Market Advisory Board.
(e) Commission study covering maintenance of accounts for buying and selling registered securities on behalf of public customers by persons not qualifying as brokers or dealers.
78o–4. Municipal securities [New].
(a) Registration of municipal securities dealers.
(b) Municipal Securities Rulemaking Board; rules and regulations.
(c) Discipline of municipal securities dealers; censure; suspension or revocation of registration; other sanctions; investigations.
(d) Issuance of municipal securities.
78q–1. National system for clearance and settlement of securities [New].
(a) Congressional findings; facilitating establishment of system.
(b) Registration of clearing agencies; application; determinations by Commission requisite to registration of applicant as clearing agency; denial of participation; discipline; summary proceedings.
(c) Registration of transfer agents.
(d) Activities of clearing agencies and transfer agents; enforcement by appropriate regulatory agencies.
(e) Physical movement of securities certificates.
78kk. Authorization of appropriations [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 80b–3, 1691c of this title; title 31 section 1052; title 43 section 1625.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in sections 2–2406, 2–2415, 28:8–102, 35–223, 35–1903 of the District of Columbia Code.

### § 78a. Short title.

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94–29, June 4, 1975, 89 Stat. 97, provided: "That this Act [enacting sections 78k–1, 78o–4, 78q–1, and 78kk of this title, amending sections 77d, 77x, 77yyy, 78b, 78c, 78d–1, 78f, 78h, 78k, 78*l*, 78m, 78o, 78o–3, 78q, 78s, 78u, 78w, 78x, 78y, 78bb, 78ee, 78ff, 78iii, 79z–3, 80a–9, 80a–10, 80a–13, 80a–15, 80a–16, 80a–18, 80a–31, 80a–35, 80a–48, 80b–3, 80b–4, and 80b–17 of this title, and enacting provisions set out as notes under sections 78a and 78f of this title] may be cited as the 'Securities Acts Amendments of 1975'."

### § 78b. Necessity for regulation.

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto, and to impose requirements necesary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions:

* * * * *

(As amended June 4, 1975, Pub. L. 94–29, § 2, 89 Stat. 97.)

AMENDMENTS

1975—Pub. L. 94–29 inserted "to remove impediments to and perfect the mechanisms of a national market for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto," following "require appropriate reports," in the introductory provisions preceding par. (1).

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 31(a) of Pub. L. 94–29 provided that: "This Act [enacting sections 78k–1, 78o–4, 78q–1, and 78kk of this title, amending this section and sections 77d, 77x, 77yyy, 78c, 78d–1, 78f, 78h, 78k, 78*l*, 78m, 78o, 78o–3, 78q, 78s, 78u, 78x, 78y, 78bb, 78ee, 78ff, 78iii, 79z–3, 80a–9, 80a–10, 80a–13, 80a–15, 80a–16, 80a–18, 80a–31, 80a–35, 80a–48, 80b–3, 80b–4, and 80b–17 of this title, and enacting provisions set out as notes under sections 78a and 78f of this title] shall become effective on the date of its enactment [June 4, 1975] except as hereinafter provided. The amendments made by this Act to sections 3(a)(12), 6(a) through (d), 11A(b), 15(a), 15A, 15B(a), 17A (b) and (c), and 19(g) of the Securities Exchange Act of 1934 [sections 78c(a)(12), 78f (a) through (d), 78k–1(b), 78o(a), 78o–3, 78o–4(a), 78q–1 (b) and (c), and 78s(g) of this title] shall become effective one hundred eighty days after the date of enactment of this Act [June 4, 1975], and the amendments made by this Act to section 31 of the Securities Exchange Act of 1934 [section 78ee of this title] shall become effective on January 1, 1976. Neither the provisions of section 3(a)(3), 6(b)(2), or 6(c)(1) of the Securities Exchange Act of 1934 (as amended by this Act [section 78c(a)(3), 78f(b)(2), or 78f(c)(1) of this title or any rule or regulation thereunder shall apply so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on the date of enactment of this Act [June 4, 1975], a member or a member firm as defined in the constitution of such exchange or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm."

FOREIGN INVESTMENT STUDY

Pub. L. 93–479, §§ 1–11, Oct. 26, 1974, 88 Stat. 1450–1454 provided:

"That this Act may be cited as the 'Foreign Investment Study Act of 1974'.

"Sec. 2. The Secretary of the Treasury and the Secretary of Commerce are hereby authorized and directed to conduct a comprehensive, overall study of foreign direct and portfolio investments in the United States.

"Sec. 3. The Departments of Commerce and Treasury, in consultation with appropriate agencies, shall determine the definitions and limitations of direct and portfolio investments for the purposes of the study authorized in section 2 of this Act.

"Sec. 4. In carrying out the study described in section 2 of this Act, the Secretary of Commerce and the Secretary of the Treasury shall, respectively and jointly as may be appropriate—

"(1) identify and collect such information as may be required to carry out the study authorized in section 2 of this Act;

"(2) consult with and secure information from (and where appropriate the views of) representatives of industry, the financial community, labor, agriculture, science and technology, academic institutions, public interest organizations, and such other groups as the Secretaries deem suitable; and

"(3) consult and cooperate with other government agencies, Federal, State, and local, and, to the extent appropriate, with foreign governments and international organizations.

"Sec. 5. The Secretary of Commerce shall carry out that part of the study authorized in section 2 of this Act relating to foreign direct investment, and shall, among other things, to the extent he determines feasible, specifically—

"(1) investigate and review the nature, scope, magnitude, and rate of foreign direct investment activities in the United States;

"(2) survey the reasons foreign firms are undertaking direct investment in the United States;

"(3) identify the processes and mechanisms through which foreign direct investment flows into the United States, the financing methods used by foreign direct investors, and the effects of such financing on American financial markets;

"(4) analyze the scope and significance of foreign direct investment in acquisitions and takeovers of existing American enterprises, the significance of such investments in the form of new facilities or joint ventures with American firms, and the effects thereof on domestic business competition;

"(5) analyze the concentration and distribution of foreign direct investment in specific geographic areas and economic sectors;

"(6) analyze the effects of foreign direct investment on United States national security, energy, natural resources, agriculture, environment, real property holdings, balance of payments, balance of trade, the United States international economic position, and various significant American product markets;

"(7) analyze the effect of foreign direct investment in terms of employment opportunities and practices and the activities and influence of foreign and American management executives employed by foreign firms;

"(8) analyze the effect of Federal, regional, State, and local laws, rules, regulations, controls, and policies on foreign direct investment activities in the United States;

"(9) compare the purpose and effect of United States, State, and local laws, rules, regulations, programs, and policies on foreign direct investment in the United States with laws, rules, regulations, programs, and policies of selected nations and areas where such comparison may be informative;

"(10) compare and contrast the foreign direct investment activities in the United States with the investment activities of American investors abroad and appraise the impact of such American activities abroad on the investment activities and policies of foreign firms in the United States;

"(11) study the adequacy of information, disclosure, and reporting requirements and procedures;

"(12) determine the effects of variations between accounting, financial reporting, and other business practices of American and foreign investors on foreign investment activities in the United States; and

"(13) study and recommend means whereby information and statistics on foreign direct investment activities can be kept current.

"Sec. 6. The Secretary of the Treasury shall carry out that part of the study authorized in section 2 of this Act relating to foreign portfolio investment, and shall, to the extent he determines feasible, specifically—

"(1) investigate and review the nature, scope, and magnitude of foreign portfolio investment activities in the United States;

"(2) survey the reasons for foreign portfolio investment in the United States;

"(3) identify the processes and mechanisms through which foreign portfolio investment is made in the United States, the financing methods used, and the effects of foreign portfolio investment on American financial markets;

"(4) analyze the effects of foreign portfolio investment on the United States balance of payments and the United States international investment position;

"(5) study and analyze the concentration and distribution of foreign portfolio investment in specific United States economic sectors;

"(6) study the effect of Federal securities laws, rules, regulations, and policies on foreign portfolio investment activities in the United States;

"(7) compare the purpose and effect of United States, State, and local laws, rules, regulations, programs, and policies on foreign portfolio investment in the United States with laws, rules, regulations, programs, and policies of selected nations and areas where such comparison may be informative;

"(8) compare the foreign portfolio investment activities in the United States with information available on the portfolio investment activities of American investors abroad;

"(9) study adequacy of information, disclosures, and reporting requirements and procedures; and

"(10) study and recommend means whereby information and statistics on foreign portfolio investment activities can be kept current.

"Sec. 7. (a) The Secretary of Commerce and the Secretary of the Treasury may each by regulation establish whatever rules each deems necessary to carry out each of his functions under this Act.

"(b) Each such Secretary may require any person subject to the jurisdiction of the United States—

"(1) to maintain a complete record of any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which such Secretary determines is germane to his functions in the foreign direct investment and foreign portfolio investment studies to be conducted pursuant to this Act; and

"(2) to furnish under oath any report containing whatever information such Secretary determines is necessary to carry out his functions in such studies. Whenever an order under clause (2) of this subsection requires a person to produce information which can be specifically identified as being part of the records of its customers, the Secretary shall, upon being provided the names and addresses of such customers, send a notice to such customers that information from their records will be disclosed pursuant to this Act; *Provided*, That this requirement shall not apply when such person is directly involved in the ownership or management of assets for the customer as nominee, agent, partner, fiduciary, trustee, or in a similar relationship.

The authority of each Secretary under this subsection shall expire on the date provided under section 10 of this Act for the Secretary of Commerce and the Secretary of the Treasury to submit a full and complete report to the Congress.

"(c) In addition to the Secretary of Commerce and the Secretary of the Treasury, the only individuals who may have access to information furnished under subsection (b)(2) are those sworn employees, including consultants, of the Department of Commerce or Department of the Treasury designated by the Secretary of either such Department. Neither such Secretary nor any such employee may—

"(1) use any information furnished under subsection (b)(2) except for analytical or statistical purposes within the United States Government; or

"(2) publish, or make available to any other person in any manner, any such information in a manner that the information furnished under subsection (b)(2) by any person can be specifically identified, except for the purposes of a proceeding under section 8.

Such Secretaries may exchange any such information furnished under subsection (b)(2) in order to prevent any duplication or omission in the studies conducted by each such Secretary pursuant to this Act.

"(d) Except for the requirement under subsection (b)(2), no agency of the United States or employee thereof may compel (1) the Secretary of Commerce or the Secretary of the Treasury, (2) any individual designated by either such Secretary under the first sentence of subsection (c), or (3) any person which maintained or furnished any report under subsection (b), to submit any such report or constituent part thereof to that agency or any other agency of the United States. Without the prior written consent of the person which maintained or furnished any report under subsection (b) and without the prior written consent of the customer, where the person maintained or furnished any such report which included information identifiable as being derived from the records of such customer, such report or any such constituent part may not be produced for any judicial or administrative proceeding, except for a proceeding under section 8(b) of this Act.

"Sec. 8. (a) Whoever fails to furnish any information required pursuant to the authority of this Act, whether required to be furnished in the form of a report or otherwise, or to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act may be assessed a civil penalty not exceeding $10,000 in a proceeding brought under subsection (b) of this section.

"(b) Whenever it appears to either the Secretary of the Treasury or the Secretary of Commerce that any person has failed to furnish any information required pursuant to the provisions of this Act, whether required to be furnished in the form of a report or otherwise, or has failed to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act, such Secretary may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, seeking a mandatory injunction commanding such person to comply with such rule, regulation, order, or instruction, and upon a proper showing by such Secretary of the relevance to the purposes of the Act of such rule, regulation, order, or instruction, a permanent or temporary injunction or restraining order shall be granted without bond, and such person may also be subject to the civil penalty provided in subsection (a) of this section if the judge finds that such penalty is necessary to obtain compliance with such injunction or restraining order.

"(c) Whoever willfully fails to submit any information required pursuant to this Act, whether required to be furnished in the form of a report or otherwise, or willfully violates any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act shall, upon conviction, be fined not more than $10,000 or, if a natural person, may be imprisoned for not more than one year or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

"Sec. 9. (a) The Secretary of Commerce and the Secretary of the Treasury may procure the temporary or intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. Persons so employed shall receive compensation at a rate to be fixed by the Secretaries concerned but not in excess of the maximum amount payable under such section. While away from his home or regular place of business and engaged in the performance of services for the Department of Commerce or the Department of the Treasury in conjunction with the provisions of this Act, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

"(b) The Secretary of Commerce and the Secretary of the Treasury are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of any agency or instrumentality of the Federal Government in conjunction with the study authorized in this Act.

"Sec. 10. The Secretary of Commerce and the Secretary of the Treasury shall submit to the Congress an interim report twelve months after the date of enactment of this Act [Oct. 26, 1974], and not later than one and one-half years after enactment of this Act, a full and complete report of the findings made under the study authorized by this Act, together with such recommendations as they consider appropriate.

"Sec. 11. There is authorized to be appropriated a sum not to exceed $3,000,000 to carry out the purposes of this Act. Any funds so appropriated shall remain available until expended."

**§ 78c. Definitions and application.**

**(a) Definitions.**

When used in this chapter, unless the context otherwise requires—

* * * * *

(3)(A) The term "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules. For purposes of sections 78f(b)(1), 78f(b)(4), 78f(b)(6), 78f(b)(7), 78f(d), 78q(d), 78s(d), 78s(e), 78s(g), 78s(h), and 78u of this title, the term "member" when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 78f(f) of this title.

(B) The term "member" when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules.

* * * * *

(9) The term "person" means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

* * * * *

(12) The term "exempted security" or "exempted securities" includes securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States; such securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest

or for the protection of investors; municipal securities, as defined in paragraph (29) of this subsection: *Provided, however*, That municipal securities shall not be deemed to be "exempted securities" for purposes of sections 78o, 78o–3 (except subsections (b)(6), (b)(11), and (g)(2) thereof), and 78q–1 of this title; any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; any interest or participation in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of Title 26, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of Title 26, other than any plan described in clause (A) or (B) of this paragraph which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of Title 26, and such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this chapter which by their terms do not apply to an "exempted security" or to "exempted securities."

* * * * *

(17) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 78o(b) of this title (other than paragraph (6) thereof).

(19) The terms "investment company", "affiliated person", "insurance company", "separate account", and "company" have the same meanings as in the Investment Company Act of 1940.

* * * * *

(21) The term "person associated with a member" or "associated person of a member" when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

(22)(A) The term "securities information processor" means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term "securities information processor" does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organizations, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker, dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association, or cooperative bank activities, or any common carrier, as defined in section 153(h) of Title 47, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 153(t) of Title 47, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribuiton or publication, information with respect to transactions in or quotations for any security.

(B) The term "exclusive processor" means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

(23)(A) The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions,

or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this chapter; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph (25)(E) of this subsection.

(24) The term "participant" when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

(25) The term "transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term "transfer agent" does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

(26) The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 78s(b), 78s(c), and 78w(b), of this title) the Municipal Securities Rulemaking Board established by section 78o–4 of this title.

(27) The term "rules of an exchange", "rules of an association", or "rules of a clearing agency" means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term "rules of a self-regulatory organization" means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency, or the rules of the Municipal Securities Rulemaking Board.

(29) The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) of Title 26) the interest on which is excludable from gross income under section 103(a)(1) of Title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c) of Title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

(30) The term "municipal securities dealer" means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise: *Provided, however,* That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 78o–4 (b) (2) (II) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

(31) The term "municipal securities broker" means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

(32) The term "person associated with a municipal securities dealer" when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

(33) The term "municipal securities investment portfolio" means all municipal securities held for investment and not for sale as part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary or a department or division of any such bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a subsidiary or a department or division of such subsidiary;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary or department or division thereof; and

(iv) the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary thereof; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia when the appropriate regulatory agency for such clearing agency is not the Commission;

(ii) the Board of Governors of the Federal Reserve System in the case of a state member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) when the appropriate regulatory agency for such clearing agency is not the Commission; and

(iv) the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act:

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia;

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank.

(E) When used with respect to a national securities exchange or registered securities association, member thereof, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having

access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

(F) When used with respect to a person exercising investment discretion with respect to an account;

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia;

(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; and

(iv) the Commission in the case of all other such persons.

As used in this paragraph, the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in section 1841 of Title 12.

(35) A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this chapter and the rules and regulations thereunder.

(36) A class of persons or markets is subject to "equal regulation" if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their regulation under this chapter which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this chapter.

(37) The term "records" means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(38) The term "market maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization;

(B) is subject to an order of the Commission denying, suspending for a period not exceeding twelve months, revoking his registration as a broker, dealer, or municipal securities dealer, or barring his being associated with a broker, dealer, or municipal securities dealer;

(C) by his conduct while associated with a broker, dealer, or municipal securities dealer, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

(D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), or (C) of this paragraph; or

(E) has committed or omitted any act enumerated in subparagraph (D) or (E) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

**(b) Power to define technical, trade, accounting, and other terms.**

The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter.

* * * * *

**(d) Issuers of municipal securities.**

No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a "broker", "dealer", or "municipal securities dealer" solely by reason of buying, selling, or effecting transactions in the issuer's securities. (As amended June 4, 1975, Pub. L. 94–29, § 3, 89 Stat. 97.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(19), is classified to section 80a–1 et seq. of this title.

The Federal Deposit Insurance Act, referred to in subsec. (a)(34)(F)(ii), is classified to section 1811 et seq. of Title 12, Bank and Banking.

AMENDMENTS

1975—Subec. (a)(3). Pub. L. 94–29, § 3(1), redefined the term "member" to recognize the elimination of fixed commission rates in the case of exchanges, added a definition of the term when used in the case of registered securities associations, expanded the definition of the term when used with respect to an exchange to include any natural person permitted to effect transactions on the floor of an exchange without the services of another person acting as broker, any registered broker or dealer with which such natural person is associated, any registered broker or dealer permitted to designate a natural person as its representative on the floor of an exchange, and any other registered broker or dealer which agrees to be regulated by an exchange and with respect to whom the exchange has undertaken to enforce compliance with its rules, this chapter, and the rules and regulations thereunder, introduced the concept of including among members any person required to comply with the rules of an exchange to the extent specified by the Commission in accordance with section 78f(f) of this title, and expanded the definition of the term when used with respect to a registered securities association to include any broker or dealer who has agreed to be regulated and with respect to whom the association undertakes to enforce compliance with its own rules, this chapter, and the rules and regulations thereunder.

Subsec. (a)(9). Pub. L. 94–29, § 3(2), substituted "a natural person, company, government, or political subdivision, agency, or instrumentality of a government" for "an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization".

Subsec. (a)(12). Pub. L. 94–29, § 3(3), brought brokers and dealers engaged exclusively in municipal securities business within the registration provisions of this chapter by transferring the existing description of municipal securities to subsec. (a)(29) and by inserting in its place provisions revoking the exempt status of municipal securities for purposes of sections 78o, 78o–3 (except subsections (b)(6), (b)(11), and (g)(2) thereof) and 78q–1 of this title.

Subsec. (a)(17). Pub. L. 94–29, § 3(4), expanded the definition of "interstate commerce" to establish that the intrastate use of any facility of an exchange, any telephones or other interstate means of communication, or any other interstate instrumentality constitutes a use of the jurisdictional means for purposes of this chapter.

Subsec. (a)(18). Pub. L. 94–29, § 3(4), expanded the definition to include persons under common control with the broker or dealer and deleted reference to the classification of the persons, including employees, controlled by a broker or a dealer.

Subsec. (a)(19). Pub. L. 94–29, § 3(4), substituted "'separate account', and 'company'" for "and 'separate account'".

Subsec. (a)(21). Pub. L. 94–29, § 3(5), broadened the definition of the term "person associated with a member" to encompass a person associated with a broker or dealer which is a member of an exchange by restating directly the definition of a "person associated with a broker or dealer" in subsec. (a)(18).

Subsecs. (a)(22) to (a)(39). Pub. L. 94–29, § 3(6), added subsecs. (a)(22) to (a)(39).

Subsec. (b). Pub. L. 94–29, § 3(7), substituted "accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter" for "and accounting terms used in this chapter insofar as such definitions are not inconsistent with the provisions of this chapter".

Subsec. (d). Pub. L. 94–29, § 3(8), added subsec. (d).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, except for amendment of subsec. (a)(12) by Pub. L. 94–29 to be effective 180 days after June 4, 1975, with provisions of subsec. (a)(3), as amended by Pub. L. 94–29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78m, 78o–4, 78q, 78w, 78y, 78ccc, 78fff, 80b–2, 80b–4 of this title; title 12 section 2290; title 22 sections 283h, 285h, 286k–1; title 25 section 646.

## § 78d. Securities and Exchange Commission.

CROSS REFERENCES

Independence of financial regulatory agencies with respect to submission of views to Congress, see section 250 of Title 12, Banks and Banking.

## § 78d–1. Delegation of functions by Commission.

**(a) Authorization; functions delegable; eligible persons; application of other laws.**

In addition to its existing authority, the Securities and Exchange Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter: *Provided, however,* That nothing herein contained shall be deemed to supersede the provisions of section 1006(a) of Title 5: *And provided further,* That nothing herein contained shall be deemed to authorize the delegation of the function of rulemaking as defined in the Administrative Procedure Act of 1946, as amended, with reference to general rules as distinguished from rules of particular applicability, or of the making of any rule pursuant to section 78s(b) of this title.

**(b) Right of review; procedure.**

With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission, by rule, shall prescribe: *Provided however,* That the vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review: *And provided further,* That a person or party shall be entitled to review by the Commission if he or it is adversely affected by action at a delegated level which (1) denies any request for action pursuant to section 77h(a) or section 77h(c) of this title or the first sentence of section 78*l*(d) of this title; (2) suspends trading in a security pursuant to section 78*l*(k) of this title; or (3) is pursuant to any provision of this chapter in a case of adjudication, as defined in section 551 of Title 5, not required by this chapter to be determined

on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a) (1) through (6) of Title 5).

* * * * *

(As amended Pub. L. 94–29, § 25, June 4, 1975, 89 Stat. 163.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29, § 25(1), substituted "any rule pursuant to section 78s(c) of this title" for "any rule, regulation, or order pursuant to section 78s(b) of this title".

Subsec. (b). Pub. L. 94–29, § 25(2), added provisions which entitle any person adversely affected by the action of the staff of the Commission, acting pursuant to delegated authority in any case of informal adjudication, to have such action reviewed by the full Commission.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78d–2 of this title.

**§ 78e. Transactions on unregistered exchanges.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78o–4 of this title.

**§ 78f. National securities exchanges.**

**(a) Registration; application.**

An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

**(b) Determination by Commission requisite to registration of applicant as a national securities exchange.**

An exchange shall not be registered as a national securities exchange unless the Commission determines that—

(1) Such exchange is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, and the rules of the exchange.

(2) Subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof.

(3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

(4) The rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange.

(6) The rules of the exchange provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this chapter, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(7) The rules of the exchange are in accordance with the provisions of subsection (d) of this section, and in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.

(8) The rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

**(c) Denial of membership in national exchanges; denial of association with member; conditions; limitation of membership.**

(1) A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.

(2) A national securities exchange may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection[1] shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer, and bar from becoming associated with a member any

[1] So in original. Probably should be "protection of investors".

person, who is subject to a statutory disqualification. A national securities exchange shall file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member, if the exchange knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person association [1] with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a resonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the exchange.

(B) A national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

(C) A national securities exchange may bar any person from becoming associated with a member if such person does not agree (i) to supply the exchange with such information with respect to its relationship and dealings with the member as may be specified in the rules of the exchange and (ii) to permit the examination of its books and records to verify the accuracy of any information so supplied.

(4) A national securities exchange may (A) limit the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: *Provided, however,* That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: *And provided further,* That the Commission, in accordance with the provisions of section 78s(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

**(d) Discipline of national securities exchange members and persons associated with members; summary proceedings.**

(1) In any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the exchange to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reasons therefor.

(2) In any proceeding by a national securities exchange to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the exchange or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the exchange to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the exchange or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A national securities exchange may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended

[1] So in original. Probably should be "associated".

from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange, or (C) limit or prohibit any person with respect to access to services offered by the exchange if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the exchange. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the exchange in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

**(e) Commissions, allowances, discounts, and other fees.**

(1) On and after June 4, 1975, no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members: *Provided, however,* That until May 1, 1976, the preceding provisions of this paragraph shall not prohibit any such exchange from imposing or fixing any schedule of commissions, allowances, discounts, or other fees to be charged by its members for acting as broker on the floor of the exchange or as odd-lot dealer: *And provided further,* That the Commission, in accordance with the provisions of section 78s(b) of this title as modified by the provisions of paragraph (4) of this subsection, may—

(A) permit a national securities exchange, by rule, to impose a reasonable schedule or fix reasonable rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange prior to November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees are in the public interest; and

(B) permit a national securities exchange, by rule, to impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange after November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees (i) are reasonable in relation to the costs of providing the service for which such fees are charged (and the Commission publishes the standards employed in adjudging reasonableness) and (ii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, taking into consideration the competitive effects of permitting such schedule or fixed rates weighed against the competitive effects of other lawful actions which the Commission is authorized to take under this chapter.

(2) Notwithstanding the provisions of section 78s(c) of this title, the Commission, by rule, may abrogate any exchange rule which imposes a schedule or fixes rates of commissions, allowances, discounts, or other fees, if the Commission determines that such schedule or fixed rates are no longer reasonable, in the public interest, or necessary to accomplish the purposes of this chapter.

(3) Until December 31, 1976, the Commission, on a regular basis, shall file with the Speaker of the House and the President of the Senate information concerning the effect on the public interest, protection of investors, and maintenance of fair and orderly markets of the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members of any national securities exchange for effecting transactions on such exchange.

(4)(A) Before approving or disapproving any proposed rule change submitted by a national securities exchange which would impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange, the Commission shall afford interested persons (i) an opportunity for oral presentation of data, views, and arguments and (ii) with respect to any such rule concerning transactions effected after November 1, 1976, if the Commission determines there are disputed issues of material fact, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) of this paragraph) such cross-examination as the Commission determines to be appropriate and required for full disclosure and proper resolution of such disputed issues of material fact.

(B) The Commission shall prescribe rules and make rulings concerning any proceeding in accordance with subparagraph (A) of this paragraph designed to avoid unnecessary costs or delay. Such rules or rulings may (i) impose reasonable time limits on each interested person's oral presentations, and (ii) require any cross-examination to which a person may be entitled under subparagraph (A) of this paragraph to be conducted by the Commission on behalf of that person in such manner as the Commission determines to be appropriate and required for full disclosure and proper resolution of disputed issues of material fact.

(C)(i) If any class of persons, the members of which are entitled to conduct (or have conducted) cross-examination under subparagraphs (A) and (B) of this paragraph and which have, in the view of the Commission, the same or similar interests in the proceeding, cannot agree upon a single representative of such interests for purposes of cross examination, the Commission may make rules and rulings specifying the manner in which such interests shall be represented and such cross-examination conducted.

(ii) No member of any class of persons with respect to which the Commission has specified the manner in which its interests shall be represented pursuant to clause (i) of this subparagraph shall be denied, pursuant to such clause (i), the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation and there are substantial and relevant issues which would not be presented adequately by group representation.

(D) A transcript shall be kept of any oral presentation and cross-examination.

(E) In addition to the bases specified in section 78y(a) of this title, a reviewing Court may set aside an order of the Commission under section 78s(b) of this title approving an exchange rule imposing a schedule or fixed rates of commissions, allowances, discounts, or other fees, if the Court finds—

(1) a Commission determination under paragraph (4)(A) of this subsection that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

(2) a Commission rule or ruling under paragraph (4)(B) of this subsection limiting the petitioner's cross-examination or rebuttal submissions,

has precluded full disclosure and proper resolution of disputed issues of material fact which were necessary for fair determination by the Commission.

**(f) Compliance of non-members with exchange rules.**

The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation, may require—

(1) any person not a member or a designated representative of a member of a national securities exchange effecting transactions on such exchange without the services of another person acting as a broker, or

(2) any broker or dealer not a member of a national securities exchange effecting transactions on such exchange on a regular basis,

to comply with such rules of such exchange as the Commission may specify. (As amended June 4, 1975, Pub. L. 94–29, § 4, 89 Stat. 104.)

AMENDMENTS

1975—Pub. L. 94–29 restructured the entire section and, in addition to such restructuring, authorized the Commission to require an exchange to file such documents and information as it deems necessary or appropriate in the public interest or for the protection of investors and to prescribe the form and substance of an exchange's application for registration, expanded to eight the number of explicit statutory requirements that must be satisfied before an exchange may be registered as a national securities exchange, set forth the authority of a national securities exchange to admit or deny persons membership or association with members, prescribed exchange procedures for instituting disciplinary actions, denying membership, and summarily suspending members or persons associated with members, specified the authority of national securities exchanges to impose schedules or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for transacting business on the exchange, and empowered the Commission to regulate any broker or dealer who effects transactions on an exchange on a regular basis but who is not a member of that exchange and any person who effects transactions on an exchange without the services of another person acting as broker.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, except for amendment of subsecs. (a) through (d) by Pub. L. 94–29 to be effective 180 days after June 4, 1975, with provisions of subsecs. (b)(2) and (c)(6), as amended by Pub. L. 94–29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to a natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

CHANGES IN ORGANIZATION AND RULES OF NATIONAL SECURITIES EXCHANGES AND REGISTERED SECURITIES ASSOCIATIONS

Section 31(b) of Pub. L. 94–29 provided that: "If it appears to the Commission at any time within one year of the effective date of any amendment made by this Act [see short title of 1975 amendment note under section 78a of this title] to the Securities Exchange Act of 1934 that the organization or rules of any national securities exchange or registered securities association registered with the Commission on the date of enactment of this Act [June 4, 1975] do not comply with such Act as amended, the Commission shall so notify such exchange or association in writing, specifying the respects in which the exchange or association is not in compliance with such Act. On and after the one hundred eightieth day following the date of receipt of such notice by a national securities exchange or registered securities association, the Commission, without regard to the provisions of section 19(h) of the Securities Exchange Act of 1934 [section 78s(h) of this title], as amended by this Act, is authorized by order, to suspend the registration of any such exchange or association or impose limitations on the activities, functions, and operations of any such exchange or association, if the Commission finds, after notice and opportunity for hearing, that the organization or rules of such exchange or association do not comply with such Act. Any such suspension or limitation shall continue in effect until the Commission, by order, declares that such exchange or association is in compliance with such requirements."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78e, 78o, 78s, 78y, 78hh of this title; title 29 section 1002.

### § 78g. Margin requirements.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78o of this title; title 31 section 1142.

### § 78h. Restrictions on borrowing and lending by members, brokers, and dealers.

It shall be unlawful for any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange, directly or indirectly—

* * * * *

(b) In contravention of such rules and regulations as the Commission shall prescribe for the protection of investors to hypothecate or arrange for the hypothecation of any securities carried for the account of any customer under circumstances (1) that will permit the commingling of his securities without his written consent with the securities of any other customer, (2) that will permit such securities to be commingled with the securities of any person other than a bona fide customer, or (3) that will

permit such securities to be hypothecated, or subjected to any lien or claim of the pledge, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities.

(c) To lend or arrange for the lending of any securities carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commission shall prescribe for the protection of investors. (As amended June 4, 1975, Pub. L. 94–29, § 5, 89 Stat. 109.)

AMENDMENTS

1975—Pub. L. 94–29, § 5(1), substituted "any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange" for "any member of a national securities exchange, or any broker or dealer who transacts a business in securities through the medium of any such member" in the provisions preceding subsec. (a).

Subsec. (b). Pub. L. 94–29, § 5(2), redesignated former subsec. (c) as (b). Former subsec. (b), which covered the maximum allowable aggregate indebtedness of brokers, was deleted.

Subsec. (c). Pub. L. 94–29, § 5(2), redesignated former subsec. (d) as (c) and in subsec. (c) as so redesignated inserted "or in contravention of such rules and regulations as the Commissioner shall prescribe for the protection of investors" following "written consent of such customer". Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 94–29, § 5(2), redesignated former subsec. (d) as (c) and amended the subsection as so redesignated.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78hh of this title.

### § 78j. Manipulative and deceptive devices.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78k, 78hh of this title.

### § 78k. Trading by members of exchanges, brokers, and dealers.

(a)(1) It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion: *Provided, however,* That this paragraph shall not make unlawful—

(A) any transaction by a dealer acting in the capacity of market maker;

(B) any transaction for the account of an odd-lot dealer in a security in which he is so registered;

(C) any stabilizing transaction effected in compliance with rules under section 78j(b) of this title to facilitate a distribution of a security in which the member effecting such transaction is participating;

(D) any bona fide arbitrage transaction, any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security, or any risk arbitrage transaction in connection with a merger, acquisition, tender offer, or similar transaction involving a recapitalization;

(E) any transaction for the account of a natural person, the estate of a natural person, or a trust (other than an investment company) created by a natural person for himself or another natural person;

(F) any transaction to offset a transaction made in error;

(G) any other transaction for a member's own account provided that (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange; and

(H) any other transaction of a kind which the Commission, by rule, determines is consistent with the purposes of this paragraph, the protection of investors, and the maintenance of fair and orderly markets.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation of exchange markets and markets occurring otherwise than on an exchange, may regulate or prohibit:

(A) transactions on a national securities exchange not unlawful under paragraph (1) of this subsection effected by any member thereof for its own account (unless such member is acting in the capacity of market maker or odd-lot dealer), the account of an associated person, or an account with respect to which such member or an associated person thereof exercises investment discretion;

(B) transactions otherwise than on a national securities exchange effected by use of the mails or any means or instrumentality of interstate commerce by any member of a national securities exchange, broker, or dealer for the account of such member, broker, or dealer (unless such member, broker, or dealer is acting in the capacity of a market maker), the account of an associated person, or an account with respect to which such member, broker, or dealer or associated person thereof exercises investment discretion; and

(C) transactions on a national securities exchange effected by any broker or dealer not a member thereof for the account of such broker or dealer (unless such broker or dealer is acting in the capacity of market maker), the account of an associated person, or an account with respect to which such broker or dealer or associated person thereof exercises investment discretion.

(3) The provisions of paragraph (1) of this subsection insofar as they apply to transactions on a national securities exchange effected by a member thereof who was a member on May 1, 1975 shall not become effective until May 1, 1978. Nothing in this paragraph shall be construed to impair or limit the authority of the Commission to regulate or prohibit such transactions prior to May 1, 1978, pursuant to paragraph (2) of this subsection.

(b) When not in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system, the rules of a national securities exchange may permit (1) a member to be registered as an odd-lot dealer and as such to buy and sell for his own account so far as may be reasonably necessary to carry on such odd-lot transactions, and (2) a member to be registered as a specialist. Under the rules and regulations of the Commission a specialist may be permitted to act as a broker and dealer or limited to acting as a broker or dealer. It shall be unlawful for a specialist or an official of the exchange to disclose information in regard to orders placed with such specialist which is not available to all members of the exchange, to any person other than an official of the exchange, a representative of the Commission, or a specialist who may be acting for such specialist: *Provided, however,* That the Commission, by rule, may require disclosure to all members of the exchange of all orders placed with specialists, under such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. It shall also be unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order.

* * * * *

(As amended June 4, 1975, Pub. L. 94–29, § 6(1), (2), 89 Stat. 110.)

CODIFICATION

Subsec. (e) of this section, which was contained in the original enactment and which directed the Commission to make a study, to be submitted on or before Jan. 3, 1936, of the feasibility of segregating the functions of dealer and broker, was repealed by section 6(3) of Pub. L. 94–29.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29 prohibited stock exchange members from effecting any transaction on the exchange for its own account, the account of an associated person, or an account with respect to which the member or an associated person exercises investment discretion, exempted from that prohibition 8 types of transactions, and authorized the Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, to regulate or prohibit the specifically exempted transactions, certain transactions otherwise that on a national securities exchange, and transactions on a national securities exchange effected by a broker or dealer not a member thereof for the account of such broker or dealer, the account of an associated person, or an account with respect to which such broker, dealer, or associated person exercises investment discretion.

Subsec. (b). Pub. L. 94–29 struck out requirement that specialist's dealings be limited to those transactions reasonably necessary to permit him to maintain a fair and orderly market, expanded the Commission's rulemaking authority in the area of specialist's dealings so that the Commission may define responsibilities and restrict activities of specialists in response to changing conditions in the market, expanded the standards to be followed by the Commission in exercising its rulemaking power to include the maintenance of fair and orderly markets and the removal of impediments to and the perfection of the mechanism of a national market system, and inserted specific reference to the Commission's power to limit the activity of a specialist to that of a broker or dealer.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78y, 78hh of this title.

### § 78k–1. National market system for securities; securities information processors.

**(a) Congressional findings; facilitating establishment of national market system for securities; designation of qualified securities.**

(1) The Congress finds that—

(A) The securities markets are an important national asset which must be preserved and strengthened.

(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

(C) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) economically efficient execution of securities transactions;

(ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

(iv) the practicability of brokers executing investors' orders in the best market; and

(v) an opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer.

(D) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under this chapter to facilitate the establishment of a national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics) in accordance with the findings and to carry out the objectives set forth in paragraph (1)

of this subsection. The Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system from among securities other than exempted securities. (Securities or classes of securities so designated are hereinafter in this section referred to as "qualified securities".

(3) The Commission is authorized in furtherance of the directive in paragraph (2) of this subsection—

(A) to create one or more advisory committees pursuant to the Federal Advisory Committee Act (which shall be in addition to the National Market Advisory Board established pursuant to subsection (d) of this section) and to employ one or more outside experts;

(B) by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this chapter in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof; and

(C) to conduct studies and make recommendations to the Congress from time to time as to the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system.

**(b) Securites information processors; registration; withdrawal of registration; access to services; censure; suspension or revocation of registration.**

(1) Except as otherwise provided in this section, it shall be unlawful for any securities information processor unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a securities information processor. The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any securities information processor or class of securities information processors or security or class of securities from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the maintenance of fair and orderly markets in securities and the removal of impediments to and perfection of the mechanism of a national market system: *Provided, however,* That a securities information processor not acting as the exclusive processor of any information with respect to quotations for or transactions in securities is exempt from the requirement to register in accordance with this subsection unless the Commission, by rule or order, finds that the registration of such securities information processor is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of this section.

(2) A securities information processor may be registerd by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the address of its principal office, or offices, the names of the securities and markets for which it is then acting and for which it proposes to act as a securities information processor, and such other information and documents as the Commission, by rule, may prescribe with regard to performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to quotations for and transaction in securities, personnel qualifications, financial condition, and such other matters as the Commission determines to be germane to the provisions of this chapter and the rules and regulations thereunder, or necessary or appropriate in furtherance of the purposes of this section.

(3) The Commission shall, upon the filing of an application for registration pursuant to paragraph (2) of this subsection, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of the publication of such notice (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a securities information processor if the Commission finds that such securities information processor is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a securities information processor, comply with the provisions of this chapter and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of this section, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently. The Commission shall deny the registration of a securities information processor if the Commission does not make any such finding.

(4) A registered securities information processor may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered securities information processor is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel the registration.

(5)(A) If any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by

such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Any prohibition or limitation on access to services with respect to which a registered securities information processor is required by this paragraph to file notice shall be subject to review by the Commission on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(B) In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered securities information processor, if the Commission finds, after notice and opportunity for hearing, that such prohibition or limitation is consistent with the provisions of this chapter and the rules and regulations thereunder and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, the Commission, by order, shall set aside the prohibition or limitation and require the registered securities information processor to permit such person access to services offered by the registered securities information processor.

(6) The Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered securities information processor or suspend for a period not exceeding twelve months or revoke the registration of any such processor, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such securities information processor, and that such securities information processor has violated or is unable to comply with any provision of this chapter or the rules or regulations thereunder.

**(c) Rules and regulations covering use of mails or other means or instrumentalities of interstate commerce; reports of purchase or sale of qualified securities; limiting registered securities transactions to national securities exchanges.**

(1) No self-regulatory organization, member thereof, securities information processor, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish, or prepare for distribution or publication any information with respect to quotations for or transactions in any security other than an exempted security, to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any such security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter to—

(A) prevent the use, distribution, or publication of fraudulent, deceptive, or manipulative information with respect to quotations for and transactions in such securities;

(B) assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information;

(C) assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information acting in such capacity;

(D) assure that all exchange members, brokers, dealers, securities information processors, and, subject to such limitations as the Commission, by rule, may impose as necessary or appropriate for the protection of investors or maintenance of fair and orderly markets, all other persons may obtain on terms which are not unreasonably discriminatory such information with respect to quotations for and transactions in such securities as is published or distributed by any self-regulatory organization or securities information processor;

(E) assure that all exchange members, brokers, and dealers transmit and direct orders for the purchase or sale of qualified securities in a manner consistent with the establishment and operation of a national market system; and

(F) assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may require any person who has effected the purchase or sale of any qualified security by use of the mails or any means or instrumentality of interstate commerce to report such

purchase or sale to a registered securities information processor, national securities exchange, or registered securities association and require such processor, exchange, or association to make appropriate distribution and publication of information with respect to such purchase or sale.

(3)(A) The Commission, by rule, is authorized to prohibit brokers and dealers from effecting transactions in securities registered pursuant to section 78*l*(b) of this title otherwise than on a national securities exchange, if the Commission finds, on the record after notice and opportunity for hearing, that—

(i) as a result of transactions in such securities effected otherwise than on a national securities exchange the fairness or orderliness of the markets for such securities has been affected in a manner contrary to the public interest or the protection of investors;

(ii) no rule of any national securities exchange unreasonably impairs the ability of any dealer to solicit or effect transactions in such securities for his own account or unreasonably restricts competition among dealers in such securities or between dealers acting in the capacity of market makers who are specialists in such securities and such dealers who are not specialists in such securities, and

(iii) the maintenance or restoration of fair and orderly markets in such securities may not be assured through other lawful means under this chapter.

The Commission may conditionally or unconditionally exempt any security or transaction or any class of securities or transactions from any such prohibition if the Commission deems such exemption consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

(B) For the purposes of subparagraph (A) of this paragraph, the ability of a dealer to solicit or effect transactions in securities for his own account shall not be deemed to be unreasonably impaired by any rule of an exchange fairly and reasonably prescribing the sequence in which orders brought to the exchange must be executed or which has been adopted to effect compliance with a rule of the Commission promulgated under this chapter.

(4)(A) The Commission is directed to review any and all rules of national securities exchanges which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges. On or before the ninetieth day following June 4, 1975, the Commission shall (i) report to the Congress the results of its review, including the effects on competition of such rules, and (ii) commence a proceeding in accordance with the provisions of section 78s(c) of this title to amend any such rule imposing a burden on competition which does not appear to the Commission to be necessary or appropriate in furtherance of the purposes of this chapter. The Commission shall conclude any such proceeding within ninety days of the date of publication of notice of its commencement.

(B) Review pursuant to section 78y(b) of this title of any rule promulgated by the Commission in accordance with any proceeding commenced pursuant to subparagraph (A) of this paragraph shall, except as to causes the court considers of greater importance, take precedence on the docket over all other causes and shall be assigned for consideration at the earliest practicable date and expedited in every way.

(5) No national securities exchange or registered securities association may limit or condition the participation of any member in any registered clearing agency.

**(d) National Market Advisory Board.**

(1) Not later than one hundred eighty days after June 4, 1975, the Commission shall establish a National Market Advisory Board (hereinafter in this section referred to as the "Advisory Board") to be composed of fifteen members, not all of whom shall be from the same geographical area of the United States, appointed by the Commission for a term specified by the Commission of not less than two years or more than five years. The Advisory Board shall consist of persons associated with brokers and dealers (who shall be a majority) and persons not so associated who are representative of the public and, to the extent feasible, have knowledge of the securities markets of the United States.

(2) It shall be the responsibility of the Advisory Board to formulate and furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization concerning the establishment, operation, and regulation of the markets for securities in the United States.

(3)(A) The Advisory Board shall study and make recommendations to the Commission as to the steps it finds appropriate to facilitate the establishment of a national market system. In so doing, the Advisory Board shall assume the responsibilities of any advisory committee appointed to advise the Commission with respect to the national market system which is in existence at the time of the establishment of the Advisory Board.

(B) The Advisory Board shall study the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system, including the need for the establishment of a new self-regulatory organization (hereinafter in this section referred to as a "National Market Regulatory Board" or "Regulatory Board") to administer the national market system. In the event the Advisory Board determines a National Market Regulatory Board should be established, it shall make recommendations as to:

(i) the point in time at which a Regulatory Board should be established;

(ii) the composition of a Regulatory Board;

(iii) the scope of the authority of a Regulatory Board;

(iv) the relationship of a Regulatory Board to the Commission and to existing self-regulatory organizations; and

(v) the manner in which a Regulatory Board should be funded.

The Advisory Board shall report to the Congress, on or before December 31, 1976, the results of such study

and its recommendations, including such recommendations for legislation as it deems appropriate.

(C) In carrying out its responsibilities under this paragraph, the Advisory Board shall consult with self-regulatory organizations, brokers, dealers, securities information processors, issuers, investors, representatives of Government agencies, and other persons interested or likely to participate in the establishment, operation, or regulation of the national market system.

**(e) Commission study covering maintenance of accounts for buying and selling registered securities on behalf of public customers by persons not qualifying as brokers or dealers.**

The Commission is authorized and directed to make a study of the extent to which persons excluded from the definitions of "broker" and "dealer" maintain accounts on behalf of public customers for buying and selling securities registered under section 78*l* of this title and whether such exclusions are consistent with the protection of investors and the other purposes of this chapter. The Commission shall report to the Congress, on or before December 31, 1976, the results of its study together with such recommendations for legislation as it deems advisable. (June 6, 1934, ch. 404, § 11A, as added June 4, 1975, Pub. L. 94–29, § 7, 89 Stat. 111.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(3)(A), is set out in an Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (b) which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78y of this title.

**§ 78*l*. Registration requirements for securities.**

* * * * *

(f)(1) Notwithstanding the foregoing provisions of this section, any national securities exchange, subject to the terms and conditions hereinafter set forth—

(A) may continue unlisted trading privileges to which a security had been admitted on such exchange prior to July 1, 1964;

(B) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security listed and registered on any other national securities exchange; and

(C) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security registered pursuant to this section or which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(B) or (g)(2)(G) of this section.

If an extension of unlisted trading privileges to a security is based upon its listing and registration on another national securities exchange, such privileges shall continue in effect only so long as such security remains listed and registered on a national securities exchange.

(2) No application pursuant to this subsection shall be approved unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors. In considering an application for the extension of unlisted trading privileges to a security not listed and registered on a national securities exchange, the Commission shall, among other matters, take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system and shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

* * * * *

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this chapter. The powers and duties of the Commission under this chapter shall be applicable to the rules of an exchange in respect of any such security. The Commission may, by such rules and regulations at it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 78m, 78n, or 78p of this title.

* * * * *

(i) In respect of any securities issued by banks the deposits of which are insured in accordance with the Federal Deposit Insurance Act or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, the powers, functions, and duties vested in the Commission to administer and enforce this section and sections 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title, (1) with respect to national banks and banks operating under the Code of Law for the District of Columbia are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System,( 3) with respect to all other insured banks are vested in the Federal Deposit Insurance Corporation, and (4) with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation are vested in the Federal Home Loan Bank Board. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board shall have the power to make such rules and regulations as may be necessary for the execution of the

functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under this section and sections 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of October 28, 1974, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

(j) The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

(k) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

(*l*) It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

(m) The Commission is authorized and directed to make a study and investigation of the practice of recording the ownership of securities in the records of the issuer in other than the name of the beneficial owner of such securities to determine (1) whether such practice is consistent with the purposes of this chapter, with particular reference to subsection (g) of this section and sections 78m, 78n, 78o(d), 78p, and 78q–1 of this title, and (2) whether steps can be taken to facilitate communications between issuers and the beneficial owners of their securities while at the same time retaining the benefits of such practice. The Commission shall report to the Congress its preliminary findings within six months after June 4, 1975, and its final conclusions and recommendations within one year of such date. (As amended Oct. 28, 1974, Pub. L. 93–495, title I, § 105(b), 88 Stat. 1503; June 4, 1975, Pub. L. 94–29, §§ 8, 9, 89 Stat. 117, 118.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (i), is classified to chapter 16 of Title 12, Banks and Banking.

AMENDMENTS

1975—Subsec. (f)(1). Pub. L. 94–29, § 8(1), added subpar. (C) and in the provisions following subpar. (C), substituted "is based" for "was originally based" and "remains listed and registered on a national securities exchange" for "shall remain listed and registered on any other national securities exchange".

Subsec. (f)(2). Pub. L. 94–29, § 8(1), substituted "after notice and opportunity for hearing" for "after appropriate notice and opportunity for hearing" and "consistent with the maintenance of fair and orderly markets and the protection of investors" for "necessary or appropriate in the public interest or for the protection of investors" in the existing provisions and added the enumration of matters to be taken into account by the Commission in considering an application for the extension of unlisted trading privileges to a security not listed and registered on a national securities exchange.

Subsec. (f)(6). Pub. L. 94–29, § 8(2), substituted "this chapter" for "section 78s(b) of this title".

Subsecs. (j) to (m). Pub. L. 94–29, § 9, added subsecs. (j) to (m).

1974—Subsec. (i). Pub. L. 93–495 added coverage of institutions insured by the Federal Savings and Loan Insurance Corporation, cl. (4), and provisions authorizing the Federal Home Loan Bank Board to promulgate necessary rules and regulations, and substituted provisions relating to issuance of regulations in order to implement agency responsibility under this subsec. for provisions relating to the binding effect of rules, regulations, forms or orders issued or adopted by the Commission pursuant to this chapter.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78d–1, 78k–1, 78*l*–1, 78m, 78n, 78o, 78p, 78q–1, 78hh, 78hh–1 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 35–222, 35–223 of the District of Columbia Code.

**§ 78m. Periodical and other reports.**

* * * * *

(f)(1) Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager and which exercises investment discretion with respect

to accounts holding equity securities of a class described in subsection (d)(1) of this section having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least $100,000,000 or such lesser amount (but in no case less than $10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter. Such reports shall include for each such equity security held on the last day of the reporting period by accounts (in aggregate or by type as the Commission, by rule, may prescribe) with respect to which the institutional investment manager exercises investment discretion (other than securities held in amounts which the Commission, by rule, determines to be insignificant for purposes of this subsection), the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. Such reports may also include for accounts (in aggregate or by type) with respect to which the institutional investment manager exercises investment discretion such of the following information as the Commission, by rule, prescribes—

(A) the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value or cost or amortized cost of each other security (other than an exempted security) held on the last day of the reporting period by such accounts;

(B) the aggregate fair market value or cost or amortized cost of exempted securities (in aggregate or by class) held on the last day of the reporting period by such accounts;

(C) the number of shares of each equity security of a class described in subsection (d)(1) of this section held on the last day of the reporting period by such accounts with respect to which the institutional investment manager possesses sole or shared authority to exercise the voting rights evidenced by such securities;

(D) the aggregate purchases and aggregate sales during the reporting period of each security (other than an exempted security) effected by or for such accounts; and

(E) with respect to any transaction or series of transactions having a market value of at least $500,000 or such other amount as the Commission, by rule, may determine, effected during the reporting period by or for such accounts in any equity security of a class described in subsection (d)(1) of this section—

(i) the name of the issuer and the title, class, and CUSIP number of the security;

(ii) the number of shares or principal amount of the security involved in the transaction;

(iii) whether the transaction was a purchase or sale;

(iv) the per share price or prices at which the transaction was effected;

(v) the date or dates of the transaction;

(vi) the date or dates of the settlement of the transaction;

(vii) the broker or dealer through whom the transaction was effected;

(viii) the market or markets in which the transaction was effected; and

(ix) such other related information as the Commission, by rule, may prescribe.

(2) The Commission, by rule or order, may exempt, conditionally or unconditionally, any institutional investment manager or security or any class of institutional investment managers or securities from any or all of the provisions of this subsection or the rules thereunder.

(3) The Commission shall make available to the public for a reasonable fee a list of all equity securities of a class described in subsection (d)(1) of this section, updated no less frequently than reports are required to be filed pursuant to paragraph (1) of this subsection. The Commission shall tabulate the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State authorities and the public. Promptly after the filing of any such report, the Commission shall make the information contained therein conveniently available to the public for a reasonable fee in such form as the Commission, by rule, may prescribe, except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of Title 5. Notwithstanding the preceding sentence, any such information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public.

(4) In exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection. In exercising such authority the Commission shall take such steps as are within its power, including consulting with the Comptroller General of the United States, the Director of the Office of Management and Budget, the appropriate regulatory agencies, Federal and State authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection, national securities exchanges, and registered securities associations, (A) to achieve uniform, centralized reporting of information concerning the securities holdings of and transactions by or for accounts with respect to which institutional investment managers exercise investment discretion, and (B) consistently with the objective set forth in the preceding subparagraph, to avoid unnecessarily duplicative reporting by, and minimize the compliance burden on, institutional investment managers. Federal authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for

by this subsection shall cooperate with the Commission in the performance of its responsibilities under the preceding sentence. An institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act, shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.

(5) (A) For purposes of this subsection the term "institutional investment manager" includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.

(B) The Commission shall adopt such rules as it deems necessary or appropriate to prevent duplicative reporting pursuant to this subsection by two or more institutional investment managers exercising investment discretion with respect to the same amount.[1] (As amended June 4, 1975, Pub. L. 94–29, § 10, 89 Stat. 119.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (f) (4), is classified to section 1811 et seq. of Title 12, Banks and Banking.

AMENDMENTS

1975—Subsec. (f). Pub. L. 94–29 added subsec. (f).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77nnn, 78*l*, 78n, 78o, 78w, 78hh, 80a–8, 80a–29, 773 of this title.

### § 78o. Registration and regulation of brokers and dealers.

(a) (1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(b) (1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents. The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

(2) (A) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

(B) Any person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on June 4, 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this chapter.

(C) Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this chapter and the rules and regulations thereunder:

[1] So in original. Probably should be "account".

*Provided, however,* That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.

(3) Any provision of this chapter (other than section 78e of this title and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this chapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein;

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of Title 18.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(F) is subject to an order of the Commission entered pursuant to paragraph (6) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer.

(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

(6) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection, has been convicted of any offense specified in subparagraph (B) of said paragraph (4) within

ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order.

(7) No registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

(A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;

(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and

(C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

(8) In addition to the fees and charges authorized by paragraph (7) of this subsection, each registered broker or dealer not a member of a registered securities association shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of the additional regulatory duties required to be performed by the Commission because such broker or dealer effects transactions in securities otherwise than on a national securities exchange of which it is a member and is not a member of a registered securities association. The Commission, by rule, shall establish such fees and charges.

(9) No broker or dealer subject to paragraph (8) of this subsection shall effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange of which it is a member) in contravention of such rules and regulations as the Commission may prescribe designed to promote just and equitable principles of trade to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(10) For the purposes of determining whether a person is subject to a statutory disqualification under section 78f(c)(2), 78o–3(g)(2), or 78q–1(b)(4)(B) of this title, the term "Commission" in paragraph (4)(B) of this subsection shall mean "exchange," "association", or "clearing agency", respectively.

(c)(1) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member by means of any manipulative, deceptive, or other fraudulent device or contrivance, and no municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance. The Commission shall, for the purposes of this paragraph, by rules and regulations define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent.

(2) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation, and no municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(3) No broker or dealer shall make use of the mails or any means or instrumentality of interstate

commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.

* * * * *

(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as a broker in that security.

(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 78g of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.

* * * * *

(e) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under this section and any person associated with any such member to comply with any provision of this chapter (other than subsection (a) of this section) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively. (As amended June 4, 1975, Pub. L. 94–29, § 11, 89 Stat. 121.)

REFERENCES IN TEXT

The Investment Advisers Act of 1940, referred to in subsec. (b)(5)(D), (E), is classified to section 80b–1 et seq. of this title.

The Investment Company Act of 1940, referred to in subsec. (b)(5)(D), (E), is classified to section 80a–1 et seq. of this title.

The Securities Act of 1933, referred to in subsecs. (b)(5)(E) and (d), is classified to section 77a et seq. of this title.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29, § 11(2), required registration with the Commission of all persons utilizing an exchange's facilities to effect transactions.

Subsec. (b). Pub. L. 94–29, § 11(2), expanded coverage to include municipal securities dealers, permitted nonbank municipal securities dealers and brokers to register company departments or divisions conducting municipal securities activities rather than the company of which the department or division is a part, subjected municipal securities and associated persons thereof to the Commission's enforcement and disciplinary powers, updated the list of statutory offenses which bar a person from becoming a broker-dealer or an associated person of a broker-dealer, expanded Commission regulatory control to include all brokers and dealers executing transactions on exchanges of which such brokers and dealers are not members, required any registered broker-dealer who is not a member of a registered securities association to pay the Commission fees imposed by it to defray the costs of the additional regulatory duties to be performed by the Commission, and clarified the power of national securities exchanges, registered securities associations, and registered clearing agencies to make determinations as to whether a person is subject to statutory disqualification.

Subsec. (c)(1). Pub. L. 94–29, § 11(3), expanded the Commission's authority to define devices, contrivances, acts, and practices deemed manipulative, deceptive, and otherwise fradulent for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(2). Pub. L. 94–29, § 11(3), expanded the Commission's authority to define quotations deemed to by fictitious for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(3). Pub. L. 94–29, § 11(3), added requirement that rules and regulations be promulgated no later than Sept. 1, 1975, establishing minimum financial responsibility requirements for all brokers and dealers.

Subsec. (c)(5). Pub. L. 94–29, § 11(4), substituted provisions authorizing the Commission to regulate trading activities of market makers other than specialists registered on a national securities exchange for provisions authorizing the Commission summarily to suspend trading, otherwise than on a national securities exchange, in any security other than an exempted security for a period not exceeding 10 days if the public interest and the protection of investors so requires.

Subsec. (c)(6). Pub. L. 94–29, § 11(5), added subsec. (c)(6).

Subsec. (e). Pub. L. 94–29, § 11(6), added subsec. (e).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, except for amendment of subsec. (a) by Pub. L. 94–29 which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78d–1, 78*l*, 78o–1, 78o–2, 78o–3, 78o–4, 78q, 78r, 78s, 78u, 78y, 78cc, 78ff, 78hh, 78hh–1, 78ccc, 78*lll*, 78nnn, 80a–8, 80a–22, 80a–29, 80a–35, 773 of this title.

**§ 78o–3. Registered securites associations.**

**(a) Registration; application.**

An association of brokers and dealers may be registered as a national securities association pursuant to subsection (b) of this section, or as an affiliated securities association pursuant to subsection (d) of this section, under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

**(b) Determinations by Commission requisite to registration of applicant as national securities association.**

An association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that—

(1) By reason of the number and geographical distribution of its members and the scope of their transactions, such association will be able to carry out the purposes of this section.

(2) Such association is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the association.

(3) Subject to the provisions of subsection (g) of this section, the rules of the association provide that any registered broker or dealer may become a member of such association and any person may become associated with a member thereof.

(4) The rules of the association assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.

(5) The rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

(6) The rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association.

(7) The rules of the association provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(8) The rules of the association are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.

(9) The rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(10) The requirements of subsection (c) of this section, insofar as these may be applicable, are satisfied.

(11) The rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

* * * * *

**(e) Dealings with nonmember professionals.**

(1) The rules of a registered securities association may provide that no member thereof shall deal with any nonmember professional (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

(2) For the purposes of this subsection, the term "nonmember professional" shall include (A) with

respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills, and (B) with respect to transactions in municipal securities, any municipal securities dealer (other than a bank or division or department of a bank) who is not a member of any registered securities association and any municipal securities broker who is not a member of any such association.

(3) Nothing in this subsection shall be so construed or applied as to prevent (A) any member of a registered securities association from granting to any other member of any registered securities association any dealer's discount, allowance, commission, or special terms, in connection with the purchase or sale of securities, or (B) any member of a registered securities association or any municipal securities dealer which is a bank or a division or department of a bank from granting to any member of any registered securities association or any such municipal securities dealer any dealer's discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities: *Provided, however,* That the granting of any such discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities shall be subject to rules of the Municipal Securities Rulemaking Board adopted pursuant to section 78o–4(b)(2)(K) of this title.

**(f) Exempt securities.**

Nothing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security.

**(g) Denial of membership.**

(1) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

(2) A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A registered securities association shall file notice with the Commission not less than thirty days prior to admitting any registered broker or dealer to membership or permitting any person to become associated with a member, if the association knew, or in the exercise of reasonable care should have known, that such broker or dealer or person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the association.

(B) A registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established.

(C) A registered securities association may bar any person from becoming associated with a member if such person does not agree (i) to supply the association with such information with respect to its relationship and dealings with the member as may be specified in the rules of the association and (ii) to permit examination of its books and records to verify the accuracy of any information so supplied.

(4) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however,* That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of such type of business done by such broker or dealer or the other types of business in which he is engaged.

**(h) Discipline of registered securities association members and persons associated with members; summary proceedings.**

(1) In any proceeding by a registered securities association to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection) the association shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the association to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the

rules of the association which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reason therefor.

(2) In any proceeding by a registered securities association to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the association shall notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the association to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the association or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A registered securities association may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the association, or (C) limit or prohibit any person with respect to access to services offered by the association if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the association in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors. (As amended June 4, 1975, Pub. L. 94–29, § 12, 89 Stat. 127.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29, § 12(2), struck out "with the Commission" following "registered", inserted reference to section 78s(a) of this title, substituted provisions covering an application for registration in the form prescribed by Commission rule containing the rules of the association and such other information and documents as the Commission prescribes as necessary or appropriate in the public interest or for the protection of investors for provisions covering a statement in the form prescribed by the Commission setting forth specified information and accompanied by specified documents, and struck out provision that registration not be construed as a waiver of constitutional rights or as a waiver of the right to contest the validity of Commission rules or regulations.

Subsec. (b). Pub. L. 94–29, § 12(2), generally amended subsec. (b) to conform its provisions concerning the registration and regulation of national and affiliated securities associations to those covering the registration and regulation of national securities exchanges contained in section 78f of this title and added provisions necessary to accommodate the creation of the Municipal Securities Rulemaking Board and to implement its purposes.

Subsec. (e). Pub. L. 94–29, § 12(3), redesignated former subsec. (i) as (e) and in subsec. (e) as so redesignated substituted "nonmember professional" for "nonmember broker or dealer" in par. (1), substituted "term 'nonmember professional' shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills" for "term 'nonmember broker or dealer' shall include any broker or dealer who makes use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security otherwise than on a national securities exchange, who is not a member of any registered securities association, except a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, or commercial bills" and added cl. (B) in par. (2), and, in par (3), designated existing provisions as cl. (A) and added cl. (B). Former subsec. (e), covering the grant and denial of registration and the revocation of affiliated association registration, was deleted. See section 78s of this title.

Subsec. (f). Pub. L. 94–29, § 12(3), redesignated former subsec. (m) as (f). Former subsec. (f), covering withdrawal from registration, was deleted. See section 78s of this title.

Subsec. (g). Pub. L. 94–29, § 12(3), (4), added subsec. (g). Former subsec. (g), covering review by the Commission of adverse actions against association members and stays of such actions, was stricken. See section 78s of this title.

Subsec. (h). Pub. L. 94–29, § 12(3), (4), added subsec. (h). Former subsec. (h), covering the Commission's action upon findings, was deleted. See sections 78s of this title.

Subsec. (i). Pub. L. 94–29, § 12(3), redesignated former subsec. (i) as (e) and amended subsec. (e) as so redesignated.

Subsecs. (j)–(*l*). Pub. L. 94–29, § 12(3), struck out subsecs. (j) to (*l*) which covered the filing of changes or additions to association rules and current information, the abrogation and alteration of association rules and supplements to association rules, the suspension of an association or its members, the revocation of registration, the expulsion of members, and the removal of officers or directors. See section 78s of this title.

Subsec. (m). Pub. L. 94–29, § 12(3), redesignated former subsec. (m) as (f).

Subsec. (n). Pub. L. 94–29, § 12(3), struck out subsec. (n) which directed that the provisions of this section prevail in the event of any conflict between this section and any other law of the United States in force on June 25, 1938.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78*o*, 78s, 78*y*, 78*ll*i, 78*ll*l, 80a–22 of this title.

### § 78o–4. Municipal securities.

**(a) Registration of municipal securities dealers.**

(1) It shall be unlawful for any municipal securities dealer (other than one registered as a broker or dealer under section 78*o* of this title) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or

to induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities dealer is registered in accordance with this subsection.

(2) A municipal securities dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal securities dealer and any persons associated with such municipal securities dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a municipal securities dealer if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

(3) Any provision of this chapter (other than section 78e of this title or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal securities dealer or any person acting on behalf of such municipal securities dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any broker, dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

**(b) Municipal Securities Rulemaking Board; rules and regulations.**

(1) Not later than one hundred twenty days after June 4, 1975, the Commission shall establish a Municipal Securities Rulemaking Board (hereinafter in this section referred to as the "Board"), to be composed initially of fifteen members appointed by the Commission, which shall perform the duties set forth in this section. The initial members of the Board shall serve as members for a term of two years, and shall consist of (A) five individuals who are not associated with any broker, dealer, or municipal securities dealer, at least one of whom shall be representative of investors in municipal securities, and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as "public representatives"); (B) five individuals who are associated with and representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "broker-dealer representatives"); and (C) five individuals who are associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "bank representatives"). Prior to the expiration of the terms of office of the initial members of the Board, an election shall be held under rules adopted by the Board (pursuant to subsection (b)(2)(B) of this section) of the members to succeed such initial members.

(2) The Board shall propose and adopt rules to effect the purposes of this chapter with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers. (Such rules are hereinafter collectively referred to in this chapter as "rules of the Board".) The rules of the Board, as a minimum, shall:

(A) provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities broker or municipal securities dealer meets such standards of operational capability and such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. In connection with the definition and application of such standards the Board may—

(i) appropriately classify municipal securities brokers and municipal securities dealers (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organization), and persons associated with municipal securities brokers and municipal securities dealers;

(ii) specify that all or any portion of such standards shall be applicable to any such class;

(iii) require persons in any such class to pass tests administered in accordance with subsection (c)(7) of this section; and

(iv) provide that persons in any such class other than municipal securities brokers and

municipal securities dealers and partners, officers, and supervisory employees of municipal securities brokers or municipal securities dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Board finds appropriate.

(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules shall provide that the membership of the Board shall at all times be equally divided among public representatives, broker-dealer representatives, and bank representatives, and that the public representatives shall be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer, or municipal securities dealer and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities. Such rules shall also specify the term members shall serve and may increase the number of members which shall constitute the whole Board provided that such number is an odd number.

(C) be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal security dealers, to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the securities or the administration of the Board, or to impose any burden or competition not necessary or appropriate in furtherance of the purposes of this chapter.

(D) if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: *Provided, however,* That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 78cc of this title.

(E) provide for the periodic examination in accordance with subsection (c)(7) of this section of municipal securities brokers and municipal securities dealers to determine compliance with applicable provisions of this chapter, the rules and regulations thereunder, and the rules of the Board. Such rules shall specify the minimum scope and frequency of such examinations and shall be designed to avoid unnecessary regulatory duplication or undue regulatory burdens for any such municipal securities broker or municipal securities dealer.

(F) include provisions governing the form and content of quotations relating to municipal securities which may be distributed or published by any municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(G) prescribe records to be made and kept by municipal securities brokers and municipal securities dealers and the periods for which such records shall be preserved.

(H) define the term "separately identifiable department or division", as that term is used in section 78c(a)(30) of this title, in accordance with specified and appropriate standards to assure that a bank is not deemed to be engaged in the business of buying and selling municipal securities through a separately identifiable department or division unless such department or division is organized and administered so as to permit independent examination and enforcement of applicable provisions of this chapter, the rules and regulations thereunder, and the rules of the Board. A separately identifiable department or division of a bank may be engaged in activities other than those relating to municipal securities.

(I) provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this section.

(J) provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

(K) establish the terms and conditions under which any municipal securities dealer may sell, or prohibit any municipal securities dealer from selling, any part of a new issue of municipal securities to a municipal securities investment portfolio during the underwriting period.

(3) Nothing in this section shall be construed to impair or limit the power of the Commission under this chapter.

**(c) Discipline of municipal securities dealers; censure; suspension or revocation of registration; other sanctions; investigations.**

(1) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or

instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the Board.

(2) The Commission, by order, shall censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal securities dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, denial, suspension, or revocation, is in the public interest and that such municipal securities dealer has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(3) Pending final determination whether any registration under this section shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered municipal securities dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal securities dealer is no longer in existence or has ceased to do business as a municipal securities dealer, the Commission, by order, shall cancel the registration of such municipal securities dealer.

(4) The Commission, by order, shall censure any person associated, or seeking to become associated with, a municipal securities dealer or suspend for a period not exceeding twelve months or bar any such person from being associated with a municipal securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom an order entered pursuant to this paragraph or paragraph (5) of this subsection suspending or barring him from being associated with a municipal securities dealer is in effect willfully to become, or to be, associated with a municipal securities dealer without the consent of the Commission, and it shall be unlawful for any municipal securities dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such municipal securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

(5) With respect to any municipal securities dealer for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such municipal securities dealer may sanction any such municipal securities dealer in the manner and for the reasons specified in paragraph (2) of this subsection and any person associated with such municipal securities dealer in the manner and for the reasons specified in paragraph (4) of this subsection. In addition, such appropriate regulatory agency may, in accordance with section 1818 of Title 12, enforce compliance by such municipal securities dealer or any person associated with such municipal securities dealer with the provisions of this section, section 78q of this title, the rules of the Board, and the rules of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, and transactions in municipal securities. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 1818(b) or 1818(c) of Title 12, and the customers of any such municipal securities dealer shall be deemed to be "depositors" as that term is used in section 1818(c) of Title 12. Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such municipal securities dealer under any other provision of law.

(6)(A) The Commission, prior to the entry of an order of investigation, or commencement of any proceedings, against any municipal securities dealer, or person associated with any municipal securities dealer, for which the Commission is not the appropriate regulatory agency, for violation of any provision of this section, section 78o(c)(1) or 78o(c)(2) of this title, any rule or regulation under any such section, or any rule of the board, shall (i) give notice to the appropriate regulatory agency for such municipal securities dealer of the identity of such municipal securities dealer or person associated with such municipal securities dealer and the nature of and basis for such proposed action and (ii) consult with such appropriate regulatory agency concerning the effect of such proposed action on sound banking practices and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by such appropriate regulatory agency against such municipal securities dealer or associated person.

(B) The appropriate regulatory agency for a municipal securities dealer (if other than the Commission), prior to the entry of an order of investigation, or commencement of any proceedings, against such municipal securities dealer or person associated with such municipal securities dealer, for violation of any provision of this section, the rules of the Board, or the rules or regulations of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, or transactions in municipal securities shall (i) give notice to the Commission of the identity of such municipal securities dealer or person associated with such municipal securities dealer and the nature of and

basis for such proposed action and (ii) consult with the Commission concerning the effect of such proposed action on the protection of investors and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by the Commission against such municipal securities dealer or associated person.

(C) Nothing in this paragraph shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission or the appropriate regulatory agency for a municipal securities dealer to initiate any action of a class described in this paragraph or to affect in any way the power of the Commission or such appropriate regulatory agency to initiate any other action pursuant to this chapter or any other provision of law.

(7) (A) Tests required pursuant to subsection (b) (2) (A) (iii) of this section shall be administered by or on behalf of and periodic examinations pursuant to subsection (b) (2) (E) of this section shall be conducted by—

(i) a registered securities association, in the case of municipal securities brokers and municipal securities dealers who are members of such association; and

(ii) the appropriate regulatory agency for any municipal securities broker or municipal securities dealer, in the case of all other municipal securities brokers and municipal securities dealers.

(B) A registered securities association shall make a report of any examination conducted pursuant to subsection (b) (2) (E) of this section and promptly furnish the Commission a copy thereof and any data supplied to it in connection with such examination. Subject to such limitations as the Commission, by rule, determines to be necessary or appropriate in the public interest or for the protection of investors, the Commission shall, on request, make available to the Board a copy of any report of an examination of a municipal securities broker or municipal securities dealer made by or furnished to the Commission pursuant to this paragraph or section 78q(c) (3) of this title.

(8) The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise, in furtherance of the purposes of this chapter, to remove from office or censure any member or employee of the Board, who, the Commission finds, on the record after notice and opportunity for hearing, has willfully (A) violated any provision of this chapter, the rules and regulations thereunder, or the rules of the Board or (B) abused his authority.

**(d) Issuance of municipal securities.**

(1) Neither the Commission nor the Board is authorized under this chapter, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.

(2) The Board is not authorized under this chapter to require any issuer of municipal securities, directly or indirectly through a municipal securities broker or municipal securities dealer or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: *Provided, however,* That the Board may require municipal securities brokers and municipal securities dealers to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to tne issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this chapter. (June 6, 1934, ch. 404, § 15B, as added June 4, 1975, Pub. L. 94–29, § 13, 89 Stat. 131.)

EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (a) which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78o–3 of this title.

**§ 78q. Records and reports.**

**(a) Rules and regulations.**

(1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(2) Every registered clearing agency shall also make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports, as the appropriate regulatory agency for such clearing agency, by rule, prescribes as necessary or appropriate for the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(3) Every registered transfer agent shall also make and keep for prescribed periods such records, furnish such copies thereof, and make such reports as the appropriate regulatory agency for such transfer agent, by rule, prescribes as necessary or appropriate in furtherance of the purposes of section 78q–1 of this title.

**(b) Examination of records; notice; avoidance of duplication and undue regulatory burden.**

All records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems neces-

sary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter: *Provided, however,* That the Commission shall, prior to conducting any such examination of a registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, give notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer of such proposed examination and consult with such appropriate regulatory agency concerning the feasibility and desirability of coordinating such examination with examinations conducted by such appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer. Nothing in the proviso to the preceding sentence shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer or to affect in any way the power of the Commission under any other provision of this chapter or otherwise to inspect, examine, or investigate any such clearing agency, transfer agent, or municipal securities dealer.

**(c) Copies of reports filed with other regulatory agencies.**

(1) Every clearing agency, transfer agent, and municipal securities dealer for which the Commission is not the appropriate regulatory agency shall (A) file with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer a copy of any application, notice, proposal, report, or document filed with the Commission by reason of its being a clearing agency, transfer agent, or municipal securities dealer and (B) file with the Commission a copy of any application, notice, proposal, report, or document filed with such appropriate regulatory agency by reason of its being a clearing agency, transfer agent, or municipal securities dealer. The Municipal Securities Rulemaking Board shall file with each agency enumerated in section 78c(a)(34)(A) of this title copies of every proposed rule change filed with the Commission pursuant to section 78s(b) of this title.

(2) The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against such clearing agency, transfer agent, or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency notice of the commencement of any proceeding and a copy of any order entered by the Commission against such clearing agency, transfer agent, or municipal securities dealer.

(3) The Commission and the appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall each notify the other and make a report of any examination conducted by it of such clearing agency, transfer agent, or municipal securities dealer, and, upon request, furnish to the other a copy of such report and any data supplied to it in connection with such examination.

**(d) Self-regulatory organizations.**

(1) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of a national market system and national system for the clearance and settlement of securities transactions, may—

(A) with respect to any person who is a member of or participant in more than one self-regulatory organization, relieve any such self-regulatory organization of any responsibility under this chapter (i) to receive regulatory reports from such person, (ii) to examine such person for compliance, or to enforce compliance by such person, with specified provisions of this chapter, the rules and regulations thereunder, and its own rules, or (iii) to carry out other specified regulatory functions with respect to such person, and

(B) allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocation, such self-regulatory organizations share authority under this chapter.

In making any such rule or entering any such order, the Commission shall take into consideration the regulatory capabilities and procedures of the self-regulatory organizations, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, cooperation and coordination among self-regulatory organizations, and the development of a national market system and a national system for the clearance and settlement of securities transactions. The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, may require any self-regulatory organization relieved of any responsibility pursuant to this paragraph, and any person with respect to whom such responsibility relates, to take such steps as are specified in any such rule or order to notify customers of, and persons doing business with, such person of the limited nature of such self-regulatory organization's responsibility for such person's acts, practices, and course of business.

(2) A self-regulatory organization shall furnish copies of any report of examination of any person who is a member of or a participant in such self-regulatory organization to any other self-regulatory organization of which such person is a member or in which such person is a participant upon the request of such person, such other self-regulatory organization , or the Commission.

**(e) Balance sheet and income statement; other financial statements and information.**

(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by an independent public accountant, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this chapter and the accounting principles and accounting standards used in their preparation.

**(f) Missing, lost, counterfeit, and stolen securities.**

(1) Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits are insured by the Federal Deposit Insurance Corporation shall—

(A) report to the Commission or other person designated by the Commission such information about missing, lost, counterfeit, or stolen securities, in such form and within such time as the Commission, by rule, determines is necessary or appropriate in the public interest or for the protection of investors; such information shall be available on request for a reasonable fee, to any such exchange, member, association, broker, dealer, municipal securities dealer, transfer agent, clearing agency, participant, member of the Federal Reserve System, or insured bank, and such other persons as the Commission, by rule, designates; and

(B) make such inquiry with respect to information reported pursuant to this subsection as the Commission, by rule, prescribes as necessary or appropriate in the public interest or for the protection of investors, to determine whether securities in their custody or control, for which they are responsible, or in which they are effecting, clearing, or settling a transaction have been reported as missing, lost, counterfeit, or stolen.

(2) Every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency, shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing. The Commission, by rule, may exempt from the provisions of this paragraph upon specified terms, conditions, and periods, any class of partners, directors, officers, or employees of any such member, broker, dealer, transfer agent, or clearing agency, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors.

(3) In order to carry out the authority under paragraphs (1) and (2) above, the Commission or its designee may enter into agreement with the Attorney General to use the facilities of the National Crime Information Center ("NCIC") to receive, store, and disseminate information in regard to missing, lost, counterfeit, or stolen securities and to permit direct inquiry access to NCIC's file on such securities for the financial community.

(4) In regard to paragraphs (1), (2), and (3), above insofar as such paragraphs apply to any bank or member of the Federal Reserve System, the Commission may delegate its authority to:

(A) the Comptroller of the Currency as to national banks and banks operating under the Code of Law for the District of Columbia;

(B) the Federal Reserve Board in regard to any member of the Federal Reserve System which is not a national bank or a bank operating under the Code of Law for the District of Columbia; and

(C) the Federal Deposit Insurance Corporation for any State bank which is insured by the Federal Deposit Insurance Corporation but which is not a member of the Federal Reserve System.

(5) The Commission shall encourage the insurance industry to require their insured to report expeditiously instances of missing, lost, counterfeit, or stolen securities to the Commission or to such other person as the Commission may, by rule, designate to receive such information.

**(g) Persons extending credit.**

Any broker, dealer, or other person extending credit who is subject to the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to this chapter shall make such reports to the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this chapter. If any such broker, dealer, or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, or other person shall permit such inspections to be made by the Board with respect to the business operations of such broker, dealer, or other person as the Board may deem necessary to enable it to obtain the required information. (As amended June 4, 1975, Pub. L. 94–29, § 14, 89 Stat. 137.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29 designated existing provisions as par. (1), in par. (1) as so designated expanded the coverage to require registered municipal securities dealers, the Municipal Securities Rulemaking Board, registered securities information processors, and registered clearing agencies to make and keep such records, to furnish copies thereof, and to make such reports as the Commission may prescribe and clarified the Com-

mission's authority to require the dissemination of reports submitted pursuant to the rules of the Commission, and added pars. (2) and (3).

Subsec. (b). Pub. L. 94–29 added subsec. (b). Former subsec. (b) redesignated (g).

Subsec. (c) to (f). Pub. L. 94–29 added subsecs. (c) to (f).

Subsec. (g). Pub. L. 94–29 redesignated former subsec. (b) as (g).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78f, 78o–3, 78o–4, 78q–1, 78s, 78y, 78hh, 78fff, 78iii of this title.

**§ 78q–1. National system for clearance and settlement of securities transactions.**

**(a) Congressional findings; facilitating establishment of system.**

(1) The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this chapter to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission shall use its authority under this chapter to assure equal regulation under this chapter of registered clearing agencies and registered transfer agents.

**(b) Registration of clearing agencies; application; determinations by Commission requisite to registration of applicant as clearing agency; denial of participation; discipline; summary proceedings.**

(1) Except as otherwise provided in this section, it shall be unlawful for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security). The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. A clearing agency or transfer agent shall not perform the functions of both a clearing agency and a transfer agent unless such clearing agency or transfer agent is registered in accordance with this subsection and subsection (c) of this section.

(2) A clearing agency may be registered under the terms and conditions hereinafter provided in this subsection and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the clearing agency and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the prompt and accurate clearance and settlement of securities transactions.

(3) A clearing agency shall not be registered unless the Commission determines that—

(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this chapter and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.

(B) Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

(C) The rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(E) The rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

(F) The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this section or the administration of the clearing agency.

(G) The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

(H) The rules of the clearing agency are in accordance with the provisions of paragraph (5) of this subsection, and, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

(I) The rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(4)(A) A registered clearing agency may, and in cases in which the Commission, by order, directs as appropriate in the public interest shall, deny participation to any person subject to a statutory disqualification. A registered clearing agency shall file notice with the Commission not less than thirty days prior to admitting any person to participation, if the clearing agency knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) A registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. A registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

(5)(A) In any proceeding by a registered clearing agency to determine whether a participant should be disciplined (other than a summary proceeding pursuant to subparagraph (C) of this paragraph), the clearing agency shall bring specific charges, notify such participant of, and give him an opportunity to defend against such charges, and keep a record. A determination by the clearing agency to impose a disciplinary sanction shall be supported by a statement setting forth—

(i) any act or practice in which such participant has been found to have engaged, or which such participant has been found to have omitted;

(ii) the specific provisions of the rules of the clearing agency which any such act or practice, or omission to act, is deemed to violate; and

(iii) the sanction imposed and the reasons therefor.

(B) In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

(C) A registered clearing agency may summarily suspend and close the accounts of a participant who (i) has been and is expelled or suspended from any self-regulatory organization, (ii) is in default of any delivery of funds or securities to the clearing agency, or (iii) is in such financial or operating difficulty that the clearing agency determines and so notifies the appropriate regulatory agency for such participant that such suspension and closing of accounts are necessary for the protection of the clearing agency, its participants, creditors, or investors. A participant so summarily suspended shall be promptly afforded an opportunity for a hearing by the clearing agency in accordance with the provisions of subparagraph (A) of this paragraph. The appropriate regulatory agency for such participant, by order, may stay any such summary suspension on its own motion or upon application by any person aggrieved thereby, if such appropriate regulatory agency determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and protection of investors.

(6) No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.

**(c) Registration of transfer agents.**

(1) Except as otherwise provided in this section, it shall be unlawful for any transfer agent, unless registered in accordance with this section, directly

or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to any security registered under section 78*l* of this title or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section. The appropriate regulatory agency, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of this section or any rule or regulation prescribed under this section, if the appropriate regulatory agency finds (A) that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds, and (B) the Commission does not object to such exemption.

(2) A transfer agent may be registered by filing with the appropriate regulatory agency for such transfer agent an application for registration in such form and containing such information and documents concerning such transfer agent as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section. Except as hereinafter provided, such registration shall become effective thirty days after receipt of such application by such appropriate regulatory agency or within such shorter period of time as such appropriate regulatory agency may determine.

(3)(A) The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent has willfully violated or is unable to comply with any provision of this section or section 78q of this title or the rules or regulations thereunder.

(B) Pending final determination whether any registration by a transfer agent under this subsection shall be denied, the appropriate regulatory agency for such transfer agent, by order, may postpone the effective date of such registration for a period not to exceed fifteen days, but if, after notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to such appropriate regulatory agency to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, such appropriate regulatory agency shall so order. Pending final determination whether any registration under this subsection shall be revoked, such appropriate regulatory agency, by order, may suspend such registration, if such suspension appears to such appropriate regulatory agency, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors.

(C) A registered transfer agent may, upon such terms and conditions as the appropriate regulatory agency for such transfer agent deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of this section, withdraw from registration by filing a written notice of withdrawal with such appropriate regulatory agency. If such appropriate regulatory agency finds that any transfer agent for which it is the appropriate regulatory agency, is no longer in existence or has ceased to do business as a transfer agent, such appropriate regulatory agency, by order, shall cancel or deny the registration.

**(d) Activities of clearing agencies and transfer agents; enforcement by appropriate regulatory agencies.**

(1) No registered clearing agency or registered transfer agent shall, directly or indirectly, engage in any activity as clearing agency or transfer agent in contravention of such rules and regulations (A) as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, or (B) as the appropriate regulatory agency for such clearing agency or transfer agent may prescribe as necessary or appropriate for the safeguarding of securities and funds.

(2) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such clearing agency or transfer agent may, in accordance with section 1818 of Title 12, enforce compliance by such clearing agency or transfer agent with the provisions of this section, sections 78q and 78s of this title, and the rules and regulations thereunder. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of an order under section 1818(b) or 1818(c) of Title 12, and the participants in any such clearing agency and the persons doing business with any such transfer agent shall be deemed to be "depositors" as that term is used in section 1818(c) of Title 12.

(3)(A) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the Commission and the appropriate regulatory agency for such clearing agency or transfer agent shall consult and cooperate with each other, and, as may be appropriate, with State banking authorities having supervision over such clearing agency or transfer agent toward the end that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to such clearing agency or transfer agent may be in accord with both sound banking practices and a national system for the prompt and accurate clearance and settlement of securities transactions. In accordance with this objective—

(i) the Commission and such appropriate regulatory agency shall, at least fifteen days prior to the issuance for public comment of any proposed rule or regulation or adoption of any rule or regulation concerning such clearing agency or transfer agent, consult and request the views of the other; and

(ii) such appropriate regulatory agency shall assume primary responsibility to examine and enforce compliance by such clearing agency or transfer agent with the provisions of this section and sections 78q and 78s of this title.

(B) Nothing in the preceding subparagraph or elsewhere in this chapter shall be construed to impair or limit (other than by the requirement of notification) the Commission's authority to make rules under any provision of this chapter or to enforce compliance pursuant to any provision of this chapter by any clearing agency or transfer agent with the provisions of this chapter and the rules and regulations thereunder.

(4) Nothing in this section shall be construed to impair the authority of any State banking authority or other State or Federal regulatory authority having jurisdiction over a person registered as a clearing agency or transfer agent to make and enforce rules governing such person which are not inconsistent with this chapter and the rules and regulations thereunder.

**(e) Physical movement of securities certificates.**

The Commission shall use its authority under this chapter to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce. (June 6, 1934, ch. 404, § 17A, as added June 4, 1975, Pub. L. 94–29, § 15, 89 Stat. 141.)

EFFECTIVE DATE

Section effective June 4, 1975, except for subsecs. (b) and (c) which are effective 180 days after June 4, 1975, see section 31(a) of PUB. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78*l*, 78o, 78q, 78s, 78y of this title.

**§ 78s. Registration, responsibilities, and oversight of self-regulatory organizations.**

**(a) Registration procedures; notice of filing; other regulatory agencies.**

(1) The Commission shall, upon the filing of an application for registration as a national securities exchange, registered securities association, or registered clearing agency, pursuant to section 78f, 78o–3, or 78q–1 of this title, respectively, publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of a publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if it finds that the requirements of this chapter and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding.

(2) With respect to an application for registration filed by a clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not grant registration prior to the sixtieth day after the date of publication of notice of the filing of such application unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that such clearing agency is so organized and has the capacity to be able to safeguard securities and funds in its custody or control or for which it is responsible and that the rules of such clearing agency are designed to assure the safeguarding of such securities and funds.

(B) The Commission shall institute proceedings in accordance with paragraph (1)(B) of this subsection to determine whether registration should be denied if the appropriate regulatory agency for such clearing agency notifies the Commission within sixty days of the date of publication of notice of the filing of such application of such appropriate regulatory agency's (i) determination that such clearing agency may not be so organized or have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency may not be designed to assure the safeguarding of such securities and funds and (ii) reasons for such determination.

(C) The Commission shall deny registration if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (1)(B) of this subsection of such appropriate regulatory agency's (i) determination that such clearing agency is not so organized or does not have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency are not designed to assure the safeguarding of such securities or funds and (ii) reasons for such determination.

(3) A self-regulatory organization may, upon such terms and conditions as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any self-regulatory organization is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel its registration. Upon the withdrawal of a national securities association from registration or the cancellation, suspension, or revocation of the registration of a national securities

association, the registration of any association affiliated therewith shall automatically terminate.

**(b) Proposed rule changes; notice; proceedings.**

(1) Each self-regulatory organization shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this subsection collectively referred to as a "proposed rule change") accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

(2) Within thirty-five days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within one hundred eighty days of the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this chapter and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(3)(A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change may take effect upon filing with the Commission if designated by the self-regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, or (iii) concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as without the provisions of such paragraph (2).

(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

(C) Any proposed rule change of a self-regulatory organization which has taken effect pursuant to subparagraph (A) or (B) of this paragraph may be enforced by such organization to the extent it is not inconsistent with the provisions of this chapter, the rules and regulations thereunder, and applicable Federal and State law. At any time within sixty days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the self-regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 78y of this title nor deemed to be "final agency action" for purposes of section 704 of Title 5.

(4) With respect to a proposed rule change filed by a registered clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not approve any such proposed rule change prior to the thirtieth day after the date of publication of notice of the filing whereof unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(B) The Commission shall institute proceedings in accordance with paragraph (2)(B) of this subsection to determine whether any such proposed rule change should be disapproved, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of publication of notice of the filing of the proposed rule change of such appropriate regulatory agency's (i) determination that the proposed

rule change may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(C) The Commission shall disapprove any such proposed rule change if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (2)(B) of this subsection of such appropriate regulatory agency's (i) determination that the proposed rule change is inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(D) The Commission shall abrogate any change in the rules of such a clearing agency made by a proposed rule change which has taken effect pursuant to paragraph (3) of this subsection, require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection, and reviewed in accordance with the provisions of paragraph (2) of this subsection, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of filing of such proposed rule change of such appropriate regulatory agency's (i) determination that the rules of such clearing agency as so changed may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

**(c) Amendment by Commission of rules of self-regulatory organizations.**

The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as "amend") the rules of a self-regulatory organization (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this chapter and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this chapter, in the following manner:

(1) The Commission shall notify the self-regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the self-regulatory organization and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

(2) The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the self-regulatory organization and a statement of the Commission's basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the self-regulatory agency to be based, including the reasons for the Commission's conclusions as to any of such facts which were disputed in the rulemaking.

(4)(A) Except as provided in paragraphs (1) through (3) of this subsection, rulemaking under this subsection shall be in accordance with the procedures specified in section 553 of Title 5 for rulemaking not on the record.

(B) Nothing in this subsection shall be construed to impair or limit the Commission's power to make, or to modify or alter the procedures the Commission may follow in making, rules and regulations pursuant to any other authority under this chapter.

(C) Any amendment to the rules of a self-regulatory organization made by the Commission pursuant to this subsection shall be considered for all purposes of this chapter to be part of the rules of such self-regulatory organization and shall not be considered to be a rule of the Commission.

**(d) Notice of disciplinary action taken by self-regulatory organization against a member or participant; review of action by appropriate regulatory agency; procedure.**

(1) If any self-regulatory organization imposes any final disciplinary sanction on any member thereof or participant therein, denies membership or participation to any applicant, or prohibits or limits any person in respect to access to services offered by such organization or member thereof or if any self-regulatory organization (other than a registered clearing agency) imposes any final disciplinary sanction on any person associated with a member or bars any person from becoming associated with a member, the self-regulatory organization shall promptly file notice thereof with the appropriate regulatory agency for the self-regulatory organization and (if other than the appropriate regulatory agency for the self-regulatory organization) the appropriate regulatory agency for such member, participant, applicant, or other person. The notice shall be in such form and contain such information as the appropriate regulatory agency for the self-regulatory organization, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this chapter.

(2) Any action with respect to which a self-regulatory organization is required by paragraph (1) of this subsection to file notice shall be subject to review by the appropriate regulatory agency for such member, participant, applicant, or other person, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after the date such notice was filed with such appropriate regulatory agency and received by such aggrieved person, or within such longer period as such appropriate regulatory agency may determine. Application to such appropriate regulatory agency for review, or the institution of review by such appropriate regulatory agency on its own motion, shall not operate as a stay of such action unless such appropriate regulatory agency otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may

consist solely of the submission of affidavits or presentation of oral arguments). Each appropriate regulatory agency shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

**(e) Disposition of review; cancellation, reduction, or remission of sanction.**

(1) In any proceeding to review a final disciplinary sanction imposed by a self-regulatory organization on a member thereof or participant therein or a person associated with such a member, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

(A) if the appropriate regulatory agency for such member, participant, or person associated with a member finds that such member, participant, or person associated with a member has engaged in such acts or practices, or has omitted such acts, as the self-regulatory organization has found him to have engaged in or omitted, that such acts or practices, or omissions to act, are in violation of such provisions of this chapter, the rules or regulations thereunder, the rules of the self-regulatory organization, or, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board as have been specified in the determination of the self-regulatory organization, and that such provisions are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall so declare and, as appropriate, affirm the sanction imposed by the self-regulatory organization, modify the sanction in accordance with paragraph (2) of this subsection, or remand to the self-regulatory organization for further proceedings; or

(B) if such appropriate regulatory agency does not make any such finding it shall, by order, set aside the sanction imposed by the self-regulatory organization and, if appropriate, remand to the self-regulatory organization for further proceedings.

(2) If the appropriate regulatory agency for a member, participant, or person associated with a member, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with paragraph (1) of this subsection that a sanction imposed by a self-regulatory organization upon such member, participant, or person associated with a member imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter or is excessive or oppressive, the appropriate regulatory agency may cancel, reduce, or require the remission of such sanction.

**(f) Dismissal of review proceeding.**

In any proceeding to review the denial of membership or participation in a self-regulatory organization to any applicant, the barring of any person from becoming associated with a member of a self-regulatory organization, or the prohibition or limitation by a self-regulatory organization of any person with respect to access to services offered by the self-regulatory organization or any member thereof, if the appropriate regulatory agency for such applicant or person, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to dismiss the proceeding or set aside the action of the self-regulatory organization) finds that the specific grounds on which such denial, bar, or prohibition or limitation is based exist in fact, that such denial, bar, or prohibition or limitation is in accordance with the rules of the self-regulatory organization, and that such rules are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall dismiss the proceeding. If such appropriate regulatory agency does not make any sucn finding or if it finds that such denial, bar, or prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, such appropriate regulatory agency, by order, shall set aside the action of the self-regulatory organization and require it to admit such applicant to membership or participation, permit such person to become associated with a member, or grant such person access to services offered by the self-regulatory organization or member thereof.

**(g) Compliance with rules and regulations.**

(1) Every self-regulatory organization shall comply with the provisions of this chapter, the rules and regulations thereunder, and its own rules, and (subject to the provisions of section 78q(d) of this title, paragraph (2) of this subsection, and the rules thereunder) absent reasonable justification or excuse enforce compliance—

(A) in the case of a national securities exchange, with such provisions by its members and persons associated with its members;

(B) in the case of a registered securities association, with such provisions and the provisions of the rules of the Municipal Securities Rulemaking Board by its members and persons associated with its members; and

(C) in the case of a registered clearing agency, with its own rules by its participants.

(2) The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this chapter, may relieve any self-regulatory organization of any responsibility under this chapter to enforce compliance with any specified provision of this chapter or the rules or regulations thereunder by any member of such organization or person associated with such a member, or any class of such members or persons associated with a member.

**(h) Suspension or revocation of self-regulatory organization's registration; censure; other sanctions.**

(1) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding

twelve months or revoke the registration of such self-regulatory organization, or to censure or impose limitations upon the activities, functions, and operations of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such self-regulatory organization has violated or is unable to comply with any provision of this chapter, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance—

(A) in the case of a national securities exchange, with any such provision by a member thereof or a person associated with a member thereof;

(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by a member thereof or a person associated with a member thereof; or

(C) in the case of a registered clearing agency, with any provision of its own rules by a participant therein.

(2) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or expel from such self-regulatory organization any member thereof or participant therein, if such member or participant is subject to an order of the Commission pursuant to section 78o(b)(4) of this title or if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such member or participant has willfully violated or has effected any transaction for any other person who, such member or participant had reason to believe, was violating with respect to such transaction—

(A) in the case of a national securities exchange, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, or the rules or regulations under any of such statutes;

(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board; or

(C) in the case of a registered clearing agency, any provision of the rules of the clearing agency.

(3) The appropriate regulatory agency for a national securities exchange or registered securities association is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or to bar any person from being associated with a member of such national securities exchange or registered securities association, if such person is subject to an order of the Commission pursuant to section 78o(b)(6) of this title or if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such person has willfully violated or has effected any transaction for any other person who, such person associated with a member had reason to believe, was violating with respect to such transaction—

(A) in the case of a national securities exchange, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, or the rules or regulations under any of such statutes; or

(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of the statutes, or the rules of the Municipal Securities Rulemaking Board.

(4) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to remove from office or censure any officer or director of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such officer or director has willfully violated any provision of this chapter, the rules or regulations thereunder, or the rules of such self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance—

(A) in the case of a national securities exchange, with any such provision by any member or person associated with a member;

(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by any member or person associated with a member; or

(C) in the case of a registered clearing agency, with any provision of the rules of the clearing agency by any participant.

**(i) Appointment of trustee.**

If a proceeding under subsection (h)(1) of this section results in the suspension or revocation of the registration of a clearing agency, the appropriate regulatory agency for such clearing agency may, upon notice to such clearing agency, apply to any court of competent jurisdiction specified in section 78u(d) or 78aa of this title for the appointment of a trustee. In the event of such an application, the court may, to the extent it deems necessary or appropriate, take exclusive jurisdiction of such clearing agency and the records and assets thereof, wherever located; and the court shall appoint the appropriate regulatory agency for such clearing agency or a person designated by such appropriate regulatory agency as trustee with power to take possession and continue to operate or terminate the operations of such clearing agency in an orderly manner for the protection of participants and investors, subject to such terms and conditions as the court may prescribe. (As amended June 4, 1975, Pub. L. 94–29, § 16, 89 Stat. 146.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (h), is classified to section 77a et seq. of this title.

The Investment Advisers Act of 1940, referred to in subsec. (h), is classified to section 80b–1 et seq. of this title.

The Investment Company Act of 1940, referred to in subsec. (h), is classified to section 80a–1 et seq. of this title.

AMENDMENTS

1975—Pub. L. 94–29 completely rewrote the section to substitute provisions covering the registration, responsibilities, and oversight of self-regulatory organizations by the Commission for provisions covering only the Commission's powers with respect to exchanges and securities, with a view to consolidating and expanding the Commission's oversight powers with respect to self-regulatory organizations, their members, participants, and officers, and with a view to giving the Commission identical powers over all self-regulatory organizations, including registered clearing agencies, and substantially strengthening the Commission's ability to assure that these organizations carry out their statutory responsibilities.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, except for amendment of subsec. (g) by Pub. L. 94–29 which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78d–1, 78f, 78k–1, 78o–3, 78q, 78q–1, 78w, 78y, 78bb, 78hh, 78iii of this title.

**§ 78u. Investigations and actions.**

**(a) Authority and discretion of Commission to investigate violations.**

The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of such provisions, in the prescribing of rules and regulations under this chapter, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

**(b) Attendance of witnesses; production of records.**

For the purpose of any such investigation, or any other proceeding under this chapter, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

**(c) Judicial enforcement of investigative power of Commission; refusal to obey subpena; criminal sanctions.**

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

**(d) Injunction proceedings.**

Whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.

**(e) Mandamus.**

Upon application of the Commission the district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding (1) any person

to comply with the provisions of this chapter, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, (2) any national securities exchange or registered securities association to enforce compliance by its members and persons associated with its members with the provisions of this chapter, the rules, regulations, and orders thereunder, and the rules of such exchange or association, or (3) any registered clearing agency to enforce compliance by its participants with the provisions of the rules of such clearing agency.

**(f) Rules of self-regulatory organizations.**

Notwithstanding any other provision of this chapter, the Commission shall not bring any action pursuant to subsection (d) or (e) of this section against any person for violation of, or to command compliance with, the rules of a self-regulatory organization unless it appears to the Commission that (1) such self-regulatory organization is unable or unwilling to take appropriate action against such person in the public interest and for the protection of investors, or (2) such action is otherwise necessary or appropriate in the public interest or for the protection of investors.

**(g) Consolidation of actions; consent of Commission.**

. Notwithstanding the provisions of section 1407(a) of Title 28, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission. The term "securities laws" as used herein includes the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.). (As amended June 4, 1975, Pub. L. 94–29, § 17, 89 Stat. 154.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29, § 17(1), expanded the Commission's power to conduct investigations to include violations of the rules of a national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board.

Subsec. (d). Pub. L. 94–29, § 17(2), redesignated former subsec. (e) as (d) and in subsec. (d) as so redesignated substituted "has engaged, is engaged, or is about to engage" for "is engaged or about to engage", "any provision" for "the provisions", "the rules or regulations" for "or of any rule or regulation", and "such a showing" for "a proper showing", and inserted "the rules of a national securities exchange or registered securities association of which such persons is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board," in the first sentence and inserted "as may constitute a violation of any provision of this chapter or the rules or regulations thereunder" in the second sentence. Former subsec. (d) was repealed by Pub. L. 91–452. See 1970 Amendment note below.

Subsec. (e). Pub. L. 94–29, § 17(2), redesignated former subsec. (f) as (e) and in subsec. (e) as so redesignated substituted "mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title" for "mandamus commanding any person to comply with the provisions of this chapter or any order of the Commission made in pursuance thereof or with any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title" and added cls. (2) and (3). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–29, § 17(3), added subsec. (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 94–29, § 17(3), added subsec. (g).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78h, 78s, 78y, 78eee, 715h of this title.

**§ 78w. Rules, regulations, and orders; annual reports.**

(a)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this chapter for which they are responsible or for the execution of the functions vested in them by this chapter, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof. No provision of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order of the Commission, the Board of Governors of the Federal Reserve System, other agency enumerated in section 78c(a)(34) of this title, or any self-regulatory organization, notwithstanding that such rule, regulation, or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(2) The Commission, in making rules and regulations pursuant to any provisions of this chapter, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission shall not adopt any such rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter. The Commission shall include in the statement of basis and purpose incorporated in any rule or regulation adopted under this chapter, the reasons for the Commission's determi-

nation that any burden on competition imposed by such rule or regulation is necessary or appropriate in furtherance of the purposes of this chapter.

(3) The Commission, in making rules and regulations pursuant to any provision of this chapter, considering any application for registration in accordance with section 78s(a) of this title, or reviewing any proposed rule change of a self-regulatory organization in accordance with section 78s(b) of this title, shall keep in a public file and make available for copying all written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule, regulation, application, or proposed rule change: *Provided, however,* That the Commission shall not be required to keep in a public file or make available for copying any such statement or communication which it may withhold from the public in accordance with the provisions of section 552 of Title 5.

(b)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title, shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this chapter.

(2) The appropriate regulatory agency for a self-regulatory organization shall include in its annual report to the Congress for each fiscal year, a summary of its oversight activities under this chapter with respect to such self-regulatory organization, including a description of any examination conducted as part of such activities of any such organization, any material recommendation presented as part of such activities to such organization for changes in its organization or rules, and any action by such organization in response to any such recommendation.

(3) The appropriate regulatory agency for any class of municipal securities dealers shall include in its annual report to the Congress for each fiscal year a summary of its regulatory activities pursuant to this chapter with respect to such municipal securities dealers, including the nature of and reason for any sanction imposed pursuant to this chapter against any such municipal securities dealer.

(4) The Commission shall also include in its annual report to the Congress for each fiscal year—

(A) a summary of the Commission's oversight activities with respect to self-regulatory organizations for which it is not the appropriate regulatory agency, including a description of any examination of any such organization, any material recommendation presented to any such organization for changes in its organization or rules, and action by any such organization in response to any such recommendations;

(B) a statement and analysis of the expenses and operations of each self-regulatory organization in connection with the performance of its responsibilities under this chapter, for which purpose data pertaining to such expenses and operations shall be made available by such organization to the Commission at its request;

(C) beginning in 1975 and ending in 1980, information, data, and recommendations with respect to the development of a national system for the prompt and accurate clearance and settlement of securities transactions, including a summary of the regulatory activities, operational capabilities, financial resources, and plans of self-regulatory organizations and registered transfer agents with respect thereto;

(D) beginning in 1975 and ending in 1980, a description of the steps taken, and an evaluation of the progress made, toward the establishment of a national market system, and recommendations for further legislation it considers advisable with respect to such system;

(E) the steps the Commission has taken and the progress it has made toward ending the physical movement of the securities certificate in connection with the settlement of securities transactions, and its recommendations, if any, for legislation to eliminate the securities certificate;

(F) The[1] number of requests for exemptions from provisions of this chapter received, the number granted, and the basis upon which any such exemption was granted;

(G) a summary of the Commission's regulatory activities with respect to municipal securities dealers for which it is not the appropriate regulatory agency, including the nature of, and reason for, any sanction imposed in proceedings against such municipal securities dealers;

(H) beginning in 1975 and ending in 1980, a description of the effect the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members for effecting transactions on a national securities exchange is having on the maintenance of fair and orderly markets and the development of a national market system for securities;

(I) a statement of the time elapsed between the filing of reports pursuant to section 78m(f) of this title and the public availability of the information contained therein, the costs involved in the Commission's processing of such reports and tabulating such information, the manner in which the Commission uses such information, and the steps the Commission has taken and the progress it has made toward requiring such reports to be filed and such information to be made available to the public in machine language;

(J) information concerning (i) the effects its rules and regulations are having on the viability of small brokers and dealers; (ii) its attempts to reduce any unnecessary reporting burden on such brokers and dealers; and (iii) its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets; and

(K) a statement detailing its administration of the Freedom of Information Act, section 552 of Title 5, including a copy of the report filed pursuant to subsection (d) of such section.

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[1] So in original.

(c) The Commission, by rule, shall prescribe the procedure applicable to every case pursuant to this chapter of adjudication (as defined in section 551 of Title 5) not required to be determined on the record after notice and opportunity for hearing. Such rules shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of written reasons. (As amended June 4, 1975, Pub. L. 94–29, § 18, 89 Stat. 155.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29 designated existing provisions as par. (1), in par. (1) as so redesignated inserted references to other agencies enumerated in section 78c(a)(34) of this title, regulations appropriate to implement the provisions of this chapter for which the agencies are responsible, the classification of persons, transactions, statements, applications, and reports, the prescribing of greater, lesser, or different requirements for different classifications, and the non-liability of self-regulatory organization, and added pars. (2) and (3).

Subsec. (b). Pub. L. 94–29 designated existing provisions as par. (1) in par. (1) as so redesignated substituted "The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title, shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this chapter" for "The Commission and the Board of Governors of the Federal Reserve System, respectively, shall include in their annual reports to Congress such information, data, and recommendation for further legislation as they may deem advisable with regard to matters within their respective jurisdictions under this chapter. The Commission shall include in its annual reports to the Congress for the fiscal years ended on June 30 of 1965, 1966, and 1967 information, data, and recommendations specifically related to the operation of the amendments to this chapter made by the Securities Acts Amendments of 1964", and added pars. (2), (3), and (4).

Subsec. (c). Pub. L. 94–29 added subsec. (c).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78c of this title.

**§ 78x. Public availability of information.**

(a) For purposes of section 552 of Title 5 the term "records" includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this chapter or otherwise.

(b) It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, statement, report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under section 552 of Title 5, or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment to such information. Nothing in this subsection shall authorize the Commission to withhold information from the Congress. (As amended June 4, 1975, Pub. L. 94–29, § 19, 89 Stat. 158.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29 substituted "For purposes of section 552 of Title 5, the term 'records' includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this chapter or otherwise" for "Nothing in this chapter shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, report, or document filed with the Commission under this chapter".

Subsec. (b). Pub. L. 94–29 redesignated subsec. (c) as (b) and in subsec. (b) as so redesignated substituted "application, statement, report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under section 552 of Title 5, or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment for such information. Nothing in this subsection shall authorize the Commission to withhold information from Congress" for "application, report, or document filed with the Commission which is not made available to the public pursuant to subsection (b) of this section: Provided, That the Commission may make available to the Board of Governors of the Federal Reserve System any information requested by the Board for the purpose of enabling it to perform its duties under this chapter". Former subsec. (b), providing for written objection to public disclosure of information, was stricken.

Subsec. (c). Pub. L. 94–29 redesignated former subsec. (c) as (b).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

**§ 78y. Court review of orders and rules.**

**(a) Final Commission orders; persons aggrieved; petition; record; findings; affirmance, modification, enforcement, or setting aside of orders; remand to adduce additional evidence.**

(1) A person aggrieved by a final order of the Commission entered pursuant to this chapter may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after the entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.

(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated by the Commission for that purpose. Thereupon the Commission shall file in the court the record on which the order complained of is entered, as provided in section 2112 of Title 28 and the Federal Rules of Appellate Procedure.

(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the record, to affirm or modify and enforce or to set aside the order in whole or in part.

(4) The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive.

(5) If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is

material and that there was reasonable ground for failure to adduce it before the Commission, the court may remand the case to the Commission for further proceedings, in whatever manner and on whatever conditions the court considers appropriate. If the case is remanded to the Commission, it shall file in the court a supplemental record containing any new evidence, any further or modified findings, and any new order.

**(b) Commission rules; persons adversely affected; petition; record; affirmance, enforcement, or setting aside of rules; findings; transfer of proceedings.**

(1) A person adversely affected by a rule of the Commission promulgated pursuant to section 78f, 78k, 78k–1, 78o(c)(5) or (6), 78o–3, 78q, 78q–1, or 78s of this title may obtain review of this rule in the United States Court of Appeals for the circuit in which he resides or has his principal place of business or for the District of Columbia Circuit, by filing in such court, within sixty days after the promulgation of the rule, a written petition requesting that the rule be set aside.

(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated for that purpose. Thereupon, the Commission shall file in the court the rule under review and any documents referred to therein, the Commission's notice of proposed rulemaking and any documents referred to therein, all written submissions and the transcript of any oral presentations in the rulemaking, factual information not included in the foregoing that was considered by the Commission in the promulgation of the rule or proffered by the Commission as pertinent to the rule, the report of any advisory committee received or considered by the Commission in the rulemaking, and any other materials prescribed by the court.

(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in paragraph (2) of this subsection, to affirm and enforce or to set aside the rule.

(4) The findings of the Commission as to the facts identified by the Commission as the basis, in whole or in part, of the rule, if supported by substantial evidence, are conclusive. The court shall affirm and enforce the rule unless the Commission's action in promulgating the rule is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law.

(5) If proceedings have been instituted under this subsection in two or more courts of appeals with respect to the same rule, the Commission shall file the materials set forth in paragraph (2) of this subsection in that court in which a proceeding was first instituted. The other courts shall thereupon transfer all such proceedings to the court in which the materials have been filed. For the convenience of the parties in the interest of justice that court may thereafter transfer all the proceedings to any other court of appeals.

**(c) Objections not urged before Commission; stay or orders and rules; transfer of enforcement or review proceedings.**

(1) No objection to an order or rule of the Commission, for which review is sought under this section, may be considered by the court unless it was urged before the Commission or there was reasonable ground for failure to do so.

(2) The filing of a petition under this section does not operate as a stay of the Commission's order or rule. Until the court's jurisdiction becomes exclusive, the Commission may stay its order or rule pending judicial review if it finds that justice so requires. After the filing of a petition under this section, the court, on whatever conditions may be required and to the extent necessary to prevent irreparable injury, may issue all necessary and appropriate process to stay the order or rule or to preserve status or rights pending its review; but (notwithstanding section 705 of Title 5) no such process may be issued by the court before the filing of the record or the materials set forth in subsection (b)(2) of this section unless: (A) the Commission has denied a stay or failed to grant requested relief, (B) a reasonable period has expired since the filing of an application for a stay without a decision by the Commission, or (C) there was reasonable ground for failure to apply to the Commission.

(3) When the same order or rule is the subject of one or more petitions for review filed under this section and an action for enforcement filed in a district court of the United States under section 78u (d) or (e) of this title, that court in which the petition or the action is first filed has jurisdiction with respect to the order or rule to the exclusion of any other court, and thereupon all such proceedings shall be transferred to that court; but, for the convenience of the parties in the interest of justice, that court may thereafter transfer all the proceedings to any other court of appeals or district court of the United States, whether or not a petition for review or an action for enforcement was originally filed in the transferee court. The scope of review by a district court under section 78u (d) or (e) of this title is in all cases the same as by a court of appeals under this section.

**(d) Other appropriate regulatory agencies.**

(1) For purposes of the preceding subsections of this section, the term "Commission" includes the agencies enumerated in section 78c(a)(34) of this title insofar as such agencies are acting pursuant to this chapter.

(2) For purposes of subsection (a)(4) of this section and section 706 of Title 5, an order of the Commission pursuant to section 78s(a) of this title denying registration to a clearing agency for which the Commission is not the appropriate regulatory agency or pursuant to section 78s(b) of this title disapproving a proposed rule change by such a clearing agency shall be deemed to be an order of the appropriate regulatory agency for such clearing agency insofar as such order was entered by reason of a determination by such appropriate regulatory agency pursuant to section 78s (a)(2)(C) or 78s(b)(4)(C) of this title that such registration or proposed rule change would

be inconsistent with the safeguarding of securities or funds. (As amended June 4, 1975, Pub. L. 94–29, § 20, 89 Stat. 158.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29 reworked existing provisions into five numbered paragraphs.

Subsec. (b). Pub. L. 94–29 substituted provisions permitting persons adversely affected by any rule promulgated by the Commission pursuant to sections 78f, 78k, 78k–1, 78o(c)(6) or (6), 78o–3, 78q, 78q–1, or 78s of this title to obtain direct review in an appropriate Court of Appeals for provisions that commencement of proceedings under subsec. (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

Subsecs. (c), (d). Pub. L. 94–29 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78f, 78h, 78k–1, 78s of this title.

### § 78aa. Jurisdiction of offenses and suits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78s of this title.

### § 78bb. Effect on existing law.

**(a) Addition of rights and remedies; recovery of actual damages; State securities commissions.**

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this chapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Nothing in this chapter shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations thereunder.

**(b) Modificaton of disciplinary procedures.**

Nothing in this chapter shall be construed to modify existing law with regard to the binding effect (1) on any member of or participant in any self-regulatory organization of any action taken by the authorities of such organization to settle disputes between its members or participants, (2) on any municipal securities dealer or municipal securities broker of any action taken pursuant to a procedure established by the Municipal Securities Rulemaking Board to settle disputes between municipal securities dealers and municipal securities brokers, or (3) of any action described in paragraph (1) or (2) on any person who has agreed to be bound thereby.

**(c) Continuing validity of disciplinary sanctions.**

The stay, setting aside, or modification pursuant to section 78s(e) of this title of any disciplinary sanction imposed by a self-regulatory organization on a member thereof, person associated with a member, or participant therein, shall not affect the validity or force of any action taken as a result of such sanction by the self-regulatory organization prior to such stay, setting aside, or modification: *Provided*, That such action is not inconsistent with the provisions of this chapter or the rules or regulations thereunder. The rights of any person acting in good faith which arise out of any such action shall not be affected in any way by such stay, setting aside, or modification.

**(d) Physical location of facilities of registered clearing agencies or registered transfer agents not to subject changes in beneficial or record ownership of securities to State or local taxes.**

No State or political subdivision thereof shall impose any tax on any change in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or registered transfer agent or any nominee thereof or custodian therefor or upon the delivery or transfer of securities to or through or receipt from such agency or agent or any nominee thereof or custodian therefor, unless such change is[1] beneficial or record ownership or such transfer or delivery or receipt would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision. No State or political subdivision thereof shall impose any tax on securities which are deposited in or retained by a registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor, unless such securities would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision.

**(e) Exchange, broker, and dealer commission; brokerage and research services.**

(1) No person using the mails, or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to June 4, 1975, solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for effecting a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion. This subsection is exclusive and plenary insofar as conduct is covered by the foregoing, unless otherwise expressly provided by contract: *Provided, however*, That nothing in this subsection shall be construed to impair or limit the power of the Commission under any other provision of this chapter or otherwise.

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[1] So in original. Probably should read "in".

(2) A person exercising investment discretion with respect to an account shall make such disclosure of his policies and practices with respect to commissions that will be paid for effecting securities transactions, at such times and in such manner, as the appropriate regulatory agency, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) For purposes of this subsection a person provides brokerage and research services insofar as he—

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

(As amended June 4, 1975, Pub. L. 94–29, § 21, 89 Stat. 160.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–29, § 21(1), struck out provisions that nothing in this chapter be construed to modify existing law with regard to the binding effect on any member of an exchange of any disciplinary action taken by the authorities of an exchange and made the remaining provisions applicable to all members of and participants in all self-regulatory organizations as well as municipal securities professionals.

Subsecs. (c) to (e). Pub. L. 94–29, § 21(2), added subsecs. (c) to (e).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

### § 78cc. Validity of contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78o–4 of this title.

### § 78ee. Transaction fees.

Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during each preceding calendar year: *Provided, however,* That no payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system. (As amended June 4, 1975, Pub. L. 94–29, § 22, 89 Stat. 162.)

AMENDMENTS

1975—Pub. L. 94–29 extended provisions requiring the payment of fees to include transactions in listed securities which occur in the over-the-counter market.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on Jan. 1, 1976, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

### § 78ff. Penalties.

(a) Any person who willfully violates any provision of this chapter, or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $10,000, or imprisoned not more than five years, or both, except that when such person is an exchange, a fine not exceeding $500,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

* * * * *

(c) Repealed. Pub. L. 94–29, § 23(2), June 4, 1975, 89 Stat. 162.

(As amended June 4, 1975, Pub. L. 94–29, §§ 23, 27(b), 89 Stat. 162, 163.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29, §§ 23(1), 27(b), inserted "or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof," and substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

Subsec. (c). Pub. L. 94–29, § 23(2), struck out subsec. (c) which rendered this section inapplicable to violations of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78o–3 of this title.

### § 78kk. Authorization of appropriations.

There are hereby authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed $51,000,000 for the fiscal

year ending June 30, 1976 and not to exceed $55,000,000 for the fiscal year ending September 30, 1977. For fiscal years succeeding the 1977 fiscal year, there may be appropriated such sums as the Congress may hereafter authorize by law. (June 6, 1934, ch. 404, § 35, as added June 4, 1975, Pub. L. 94–29, § 24, 89 Stat. 162.)

EFFECTIVE DATE

Section effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

## Chapter 2B–1.—SECURITIES INVESTOR PROTECTION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 78u of this title.

### § 78iii. Functions of self-regulatory organizations.

* * * * *

**(c) Inspections.**

The self-regulatory organization of which a member of SIPC is a member shall inspect or examine such member for compliance with applicable financial responsibility rules, except that if a member of SIPC is a member of more than one self-regulatory organization, the Commission, pursuant to section 78q(d) of this title, shall designate one of such self-regulatory organizations as responsible for the examination of such member for compliance with applicable financial responsibility rules.

* * * * *

(As amended Pub. L. 94–29, § 26, June 4, 1975, 89 Stat. 163.)

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–29 directed the Commission to designate the self-regulatory organization to be responsible for enforcing applicable rules with respect to any firm which is a member of more than one self-regulatory organization.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

## Chapter 2C.—PUBLIC UTILITY HOLDING COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 78u of this title.

### § 79z–3. Penalties.

Any person who willfully violates any provision of this chapter or any rule, regulation, or order thereunder (other than an order of the Commission under subsections (b), (d), (e), or (f) of section 79k of this title), or any person who willfully makes any statement or entry in any application, report, document, account, or record filed or kept or required to be filed or kept under the provisions of this chapter or any rule, regulation, or order thereunder, knowing such statement or entry to be false or misleading in any material respect, or any person who willfully destroys (except after such time as may be prescribed under any rules or regulations under this chapter), mutilates, alters, or by any means or device falsifies any account, correspondence, memorandum, book, paper, or other record kept or required to be kept under the provisions of this chapter or any rule, regulation, or order thereunder, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 79d of this title by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order. (As amended June 4, 1975, Pub. L. 94–29, § 27(c), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

## Chapter 2D.—INVESTMENT COMPANIES AND ADVISERS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 26 sections 4920, 4975; title 29 section 1101.

## SUBCHAPTER I.—INVESTMENT COMPANIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 78c, 78m, 78n, 78o, 78s, 78u, of this title; 80b–2, 80b–3 of this title; title 26 sections 4917, 4920; title 29 sections 1002, 1101; title 43 section 1625.

### § 80a–6. Exemptions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a–15 of this title.

### § 80a–9. Ineligibility of certain affiliated persons and underwriters.

* * * * *

**(d) Corporate or other trustees performing functions of investment advisers.**

For the purposes of subsection (a) through (c) of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser. (As amended June 4, 1975, Pub. L. 94–29, § 28(6), 89 Stat. 166.)

AMENDMENTS

1975—Subsec. (d). Pub. L. 94–29 added subsec. (d).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a–35 of this title; title 29 section 1111.

### § 80a–10. Affiliations or interest of directors, officers, and employees.

* * * * *

(e) If by reason of the death, disqualification, or bona fide resignation of any director or directors, the requirements of the foregoing provisions of this section or of section 80a–15(f)(1) of this title in respect of directors shall not be met by a registered investment company, the operation of such provision shall be suspended as to such registered company—

(1) for a period of thirty days if the vacancy or vacancies may be filled by action of the board of directors;

(2) for a period of sixty days if a vote of stockholders is required to fill the vacancy or vacancies; or

(3) for such longer period as the Commission may prescribe, by rules and regulations upon its own motion or by order upon application, as not inconsistent with the protection of investors.

* * * * *

(As amended June 4, 1975, Pub. L. 94–29, § 28(5), 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (e). Pub. L. 94–29 added reference to the provisions of section 80a–15(f)(1) of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a–12 of this title.

**§ 80a–13. Changes in investment policy.**

* * * * *

(b) In the case of a common-law trust of the character described in section 80a–16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of subsection (a) of this section be deemed the equivalent of the vote of a majority of the outstanding voting securities, and the provisions of paragraph (42) of section 80a–2(a) of this title as to a majority shall be applicable to the vote cast at such a meeting. (As amended June 4, 1975, Pub. L. 94–29, § 28(4), 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–29 substituted "section 80a–16(c) of this title" for "subsection (b) of section 80a–16 of this title".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

**§ 80a–15. Contracts of advisers and underwriters.**

* * * * *

(c) In addition to the requirements of subsections (a) and (b) of this section, it shall be unlawful for any registered investment company having a board of directors to enter into, renew, or perform any contract or agreement, written or oral, whereby a person undertakes regularly to serve or act as investment adviser of or principal underwriter for such company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of directors, who are not parties to such contract or agreement or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval. It shall be the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company. It shall be unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsection (f) of this section.

(d) In the case of a common-law trust of the character described in section 80a–16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of this section be deemed the equivalent of the vote of a majority of the outstanding voting securities, and the provisions of paragraph (40) of section 80a–2(a) of this title as to a majority shall be applicable to the vote cast at such a meeting.

* * * * *

(f)(1) An investment adviser, or a corporate trustee performing the functions of an investment adviser, of a registered investment company or an affiliated person of such investment adviser or corporate trustee may receive any amount or benefit in connection with a sale of securities of, or a sale of any other interest in, such investment adviser or corporate trustee which results in an assignment of an investment advisory contract with such company or the change in control of or identity of such corporate trustee, if—

(A) for a period of three years after the time of such action, at least 75 per centum of the members of the board of directors of such registered company or such corporate trustee (or successor thereto, by reorganization or otherwise) are not (i) interested persons of the investment adviser of such company or such corporate trustee, or (ii) interested persons of the predecessor investment adviser or such corporate trustee; and

(B) there is not imposed an unfair burden on such company as a result of such transaction or any express or implied terms, conditions, or understandings applicable thereto.

(2)(A) For the purpose of paragraph (1)(A) of this subsection, interested persons of a corporate trustee shall be determined in accordance with section 80a–2(a)(19)(B) of this title: *Provided,* That no person shall be deemed to be an interested person of a corporate trustee solely by reason of (i) his being a member of its board of directors or advisory board or (ii) his membership in the immediate family of any person specified in clause (i) of this subparagraph.

(B) For the purpose of paragraph (1)(B) of this subsection, an unfair burden on a registered investment company includes any arrangement, during the two-year period after the date on which any such transaction occurs, whereby the investment adviser

or corporate trustee or predecessor or successor investment advisers or corporate trustee or any interested person of any such adviser or any such corporate trustee receives or is entitled to receive any compensation directly or indirectly (i) from any person in connection with the purchase or sale of securities or other property to, from, or on behalf of such company, other than bona fide ordinary compensation as principal underwriter for such company, or (ii) from such company or its security holders for other than bona fide investment advisory or other services.

(3) If—

(A) an assignment of an investment advisory contract with a registered investment company results in a successor investment adviser to such company, or if there is a change in control of or identity of a corporate trustee of a registered investment company, and such adviser or trustee is then an investment adviser or corporate trustee with respect to other assets substantially greater in amount than the amount of assets of such company, or

(B) as a result of a merger of, or a sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, a transaction occurs which would be subject to paragraph (1)(A) of this subsection.

such discrepancy in size of assets shall be considered by the Commission in determining whether or to what extent an application under section 80a–6(c) of this title for exemption from the provisions of paragraph (1)(A) of this subsection should be granted.

(4) Paragraph (1)(A) of this subsection shall not apply to a transaction in which a controlling block of outstanding voting securities of an investment adviser to a registered investment company or of a corporate trustee performing the functions of an investment adviser to a registered investment company is—

(A) distributed to the public and in which there is, in fact, no change in the identitv of the persons who control such investment adviser or corporate trustee, or

(B) transferred to the investment adviser or the corporate trustee, or an affiliated person or persons of such investment adviser or corporate trustee, or is transferred from the investment adviser or corporate trustee to an affiliated person or persons of the investment adviser or corporate trustee: *Provided*, That (i) each transferee (other than such adviser or trustee) is a natural person and (ii) the transferees (other than such adviser or trustee) owned in the aggregate more than 25 per centum of such voting securities for a period of at least six months prior to such transfer.

(As amended June 4, 1975, Pub. L. 94–29, § 28(1), (2), (4), 89 Stat. 164, 165.)

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–29, § 28(2), added provisions making it unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsec. (f).

Subsec. (d). Pub. L. 94–29, § 28(4), substituted "section 80a–16(c) of this title" for "subsection (b) of section 80a–16 of this title".

Subsec. (f). Pub. L. 94–29, § 28(1), added subsec. (f).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a–10, 80a–16 of this title.

**§ 80a–16. Board of directors; election; term vacancies; trustees of common-law trusts.**

* * * * *

(b) Any vacancy on the board of directors of a registered investment company which occurs in connection with compliance with section 80a–15(f)(1)(A) of this title and which must be filled by a person who is not an interested person of either party to a transaction subject to section 80a–15(f)(1)(A) of this title shall be filled only by a person (1) who has been selected and proposed for election by a majority of the directors of such company who are not such interested persons, and (2) who has been elected by the holders of the outstanding voting securities of such company, except that in the case of the death, disqualification, or bona fide resignation of a director selected and elected pursuant to clauses (1) and (2) of this subsection (b), the vacancy created thereby may be filled as provided in subsection (a) of this section.

(c) The foregoing provisions of this section shall not apply to a common-law trust existing on August 22, 1940, under an indenture of trust which does not provide for the election of trustees by the shareholders. No natural person shall serve as trustee of such a trust, which is registered as an investment company, after the holders of record of not less than two-thirds of the outstanding shares of beneficial interest in such trust have declared that he be removed from that office either by declaration in writing filed with the custodian of the securities of the trust or by votes cast in person or by proxy at a meeting called for the purpose. Solicitation of such a declaration shall be deemed a solicitation of a proxy within the meaning of section 80a–20(a) of this title.

* * * * *

(As amended June 4, 1975, Pub. L. 94–29, § 28(3), 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–29, § 28(3)(C), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 94–29, § 28(3)(A), (B), redesignated former subsec. (b) as (c) and in subsec. (c) as so redesignated substituted "The foregoing provisions of this section" for "The provisions of subsection (a) of this section" in the first sentence.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a–13, 80a–15, 80a–18, 80a–31 of this title.

**§ 80a–18. Capital structure of investment companies.**

* * * * *

(i) Except as provided in subsection (a) of this section, or as otherwise required by law, every share of stock hereafter issued by a registered management company (except a common-law trust of the character described in section 80a–16(c) of this title) shall be a voting stock and have equal voting rights with every other outstanding voting stock: *Provided,* That this subsection shall not apply to shares issued pursuant to the terms of any warrant or subscription right outstanding on March 15, 1940, or any firm contract entered into before March 15, 1940, to purchase such securities from such company nor to shares issued in accordance with any rules, regulations, or orders which the Commission may make permitting such issue.

* * * * *

(k) The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under chapter 14B of this title, and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of senior security shall be held or guaranteed by the Small Business Administration. (As amended Pub. L. 85–699, title III, § 319, as added Pub. L. 92–595, § 2(g), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 94–29, § 28(4), June 4, 1975, 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (i). Pub. L. 94–29 substituted "section 80a–16(c) of this title" for "section 80a–16(b) of this title".

1972—Subsec. (k). Section 319 of Pub. L. 85–699, as added by Pub. L. 92–595, added provision that subsec. (a)(2) shall not apply to companies operating under chapter 14B of this title, so long as such class of senior security shall be held or guaranteed by the Small Business Administration.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a–23 of this title.

**§ 80a–27. Periodic payment plans.**

* * * * *

**(f) Charges, statement; rules; surrender of certificates; regulations.**

With respect to any periodic payment plan (other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment), the custodian bank for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected payments on the certificate and a notice of his right of withdrawal as specified in this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection. The certificate holder may within forty-five days of the mailing of the notice specified in this subsection surrender his certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from the underwriter or depositor, equal to the difference between the gross payments made and the net amount invested. The Commission may make rules and regulations applicable to underwriters and depositors of companies issuing any such certificate specifying such reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

* * * * *

(As amended Nov. 23, 1971, Pub. L. 92–165, 85 Stat. 487.)

AMENDMENTS

1971—Subsec. (f). Pub. L. 92–165 inserted the parenthetical text "(other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment)".

**§ 80a–31. Accountants and auditors.**

(a) It shall be unlawful for any registered management company or registered face-amount certificate company to file with the Commission any financial statement signed or certified by an independent public accountant, unless—

* * * * *

If the selection of an accountant has been rejected pursuant to paragraph (2) or his employment terminated pursuant to paragraph (3), the vacancy so occurring may be filled by a vote of a majority of the outstanding voting securities, either at the meeting at which the rejection or termination occurred or, if not so filled, at a subsequent meeting which shall be called for the purpose. In the case of a common-law trust of the character described in section 80a–16(c) of this title, no ratification of the employment of such accountant shall be required but such employment may be terminated and such accountant removed by action of the holders of record of a majority of the outstanding shares of beneficial interest in such trust in the same manner as is provided in section 80a–16(b) of this title in respect of the removal of a trustee, and all the provisions therein contained as to the calling of a meeting shall be applicable. In the event of such termination and removal, the vacancy so occurring may be filled by action of the holders of record of a majority of the shares of beneficial interest either at the meeting, if any, at which such termination and removal occurs, or by instruments in writing filed with the custodian, or if not so filed within a reasonable time then at a subsequent meeting which shall be called by the trustees for the purpose. The provisions of paragraph (42) of section 80a–2(a) of this title as to a majority shall be applicable to the vote cast at any meeting of the shareholders of such a trust held pursuant to this subsection.

* * * * *

(As amended June 4, 1975, Pub. L. 94–29, § 28(4), 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–29 substituted "section 80a–16(c) of this title" for "section 80a–16(b) of this title".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

**§ 80a–35. Breach of fiduciary duty.**

* * * * *

**(c) Corporate or other trustees performing functions of investment advisers.**

(c) For the purposes of subsections (a) and (b) of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser. (As amended June 4, 1975, Pub. L. 94–29, § 28(7), 89 Stat. 166.)

CODIFICATION

The subsection added by Pub. L. 94–29 (see 1975 Amendment note hereunder) was designated in the original as "(d)". For purposes of codification that designation has been changed from "(a)" to "(c)" and within the subsection as so redesignated "subsections (a) through (c) of this section" has been changed to "subsections (a) and (b) of this section".

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–29 added subsec. (c).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

**§ 80a–48. Penalties.**

Any person who willfully violates any provision of this subchapter or of any rule, regulation, or order hereunder, or any person who willfully in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this subchapter or the keeping of which is required pursuant to section 80a–30 (a) of this title makes any untrue statement of a material fact or omits to state any material fact necessary in order to prevent the statements made therein from being materially misleading in the light of the circumstances under which they were made, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no actual knowledge of such rule, regulation, or order. (As amended June 4, 1975, Pub. L. 94–29, § 27(e), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

## SUBCHAPTER II.—INVESTMENT ADVISORS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 78c, 78o, 78s, 78u, 80a–49 of this title; title 29 section 1002.

**§ 80b–3. Registration of investment advisers.**

* * * * *

(c)(1) An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

(A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of his or its principal business office and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

(D) a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified);

(E) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

(F) the basis or bases upon which such investment adviser is compensated;

(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section; and

(H) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser, consists or is to consist of rendering investment supervisory services.

(2) Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration; or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its

registration would be subject to suspension or revocation under subsection (e) of this section.

* * * * *

(e) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

(1) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds—

(A) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary;

(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; or

(D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of Title 18.

(3) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(4) has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, subchapter I of this chapter, this subchapter, or the rules or regulations under any such statutes or any rule of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(5) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, subchapter I of this chapter, this subchapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this paragraph (5) no person shall be deemed to have failed reasonably to supervise any person, if—

(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(B) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(6) is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser which order is in effect with respect to such person.

(f) The Commission, by order, shall censure or place limitations on the activities of any person associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding twelve months or bar any such person from being associated with an investment adviser, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (4), or (5) of subsection (e) of this section or has been convicted of any offense specified in paragraph (2) of said subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (3) of said subsection (e). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

(g) Any successor to the business of an investment adviser registered under this section shall be deemed likewise registered hereunder, if within thirty days from its succession to such business it shall file an application for registration under this section, unless and until the Commission, pursuant to subsection (d) of this section, shall deny registration to or revoke or suspend the registration of such successor.

(h) Any person registered under this section may, upon such terms and conditions as the Commission finds necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any person registered under this section, or who has pending an

application for registration filed under this section, is no longer in existence or is not engaged in business as an investment adviser, the Commission shall by order cancel the registration of such person. (As amended June 4, 1975, Pub. L. 94–29, § 29(1)–(4), 89 Stat. 166–169.)

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–29, § 29(1), added provision authorizing the Commission to require a balance sheet certified by an independent public accountant and other financial statements which, as the Commission specifies, may be certified, and substituted provisions directing the Commission either to grant the registration within forty-five days or institute proceedings to determine whether registration should be denied, directing the Commission to grant registration if it finds that the requirements of this section are satisfied, and requiring the Commission to deny registration if it does not make such a finding or finds that if the applicant were registered its registration would be subject to suspension or revocation for provisions directing that registration be effective thirty days after receipt of the application by the Commission except as otherwise provided and making allowances for amendment of the application.

Subsec. (e). Pub. L. 94–29, § 29(2), added the placing of limitations on the activities of investment advisers to the enumeration of sanctions available to the Commission as set out in the provisions preceding par. (1), added references in par. (2)(A) to the taking of a false oath, the making of a false report, bribery, perjury, burglary, and conspiracy to commit such offenses, expanded par. (2)(B) to include municipal securities dealers, banks, insurance companies, and fiduciaries, added references in par. (2)(C) to larceny, theft, robbery, extortion, forgery, counterfeiting, and fraudulent concealment, added references in par. (2)(D) to section 152 and chapters 25 and 47 of Title 18, and inserted reference ot the rules of the Municipal Securities Rulemaking Board in pars. (4) and (5).

Subsec. (f). Pub. L. 94–29, § 29(3), added the placing of limitations on the activities of persons associated or seeking to become associated with an investment adviser to the enumeration of sanctions available to the Commission.

Subsec. (g). Pub. L. 94–29, § 29(4), redesignated former subsec. (h) as (g). Former subsec. (g), covering the postponment of the effective day of registration by the commencement of a proceeding to deny registration was stricken.

Subsec. (h). Pub. L. 94–29, § 29(4), redesignated former subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 94–29, § 29(4), redesignated former subsec. (i) as (h).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a–35, 80b–2, 80b–4, 80b–5, 80b–8 of this title.

### § 80b–4. Reports by investment advisers.

Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 80b–3(b) of this title), shall make and keep for prescribed periods such records (as defined in section 78c(a)(37) of this title), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors. (As amended June 4, 1975, Pub. L. 94–29, § 29(5), 89 Stat. 169.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "make and keep for prescribed periods such records (as defined in section 78c(a)(37) of this title), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors" for "make, keep, and preserve for such periods, such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memorandums, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

### § 80b–17. Penalties.

Any person who willfully violates any provision of this subchapter, or any rule, regulation, or order promulgated by the Commission under authority thereof, shall, upon conviction, be fined not more than $10,000, imprisoned for not more than five years, or both. (As amended June 4, 1975, Pub. L. 94–29, § 27(f), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "imprisoned for not more than five years" for "imprisoned for not more than two years".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective on June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

## Chapter 4.—CHINA TRADE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 26 section 992.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 47–1504 of the District of Columbia Code.

## Chapter 6.—WEIGHTS AND MEASURES AND STANDARD TIME

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## SUBCHAPTER I.—WEIGHTS, MEASURES, AND STANDARDS GENERALLY

**§§ 201 to 205.**

CODIFICATION

Sections 201 to 205 have been designated "Subchapter I" for purposes of codification.

SECTION REFERRED TO IN OTHER SECTIONS

Section 204 of this title is referred to in section 205a of this title.

## SUBCHAPTER II.—METRIC CONVERSION [NEW]

### § 205a. Congressional statement of findings.

The Congress finds as follows:

(1) The United States was an original signatory party to the 1875 Treaty of the Meter (20 Stat. 709), which established the General Conference of Weights and Measures, the International Committee of Weights and Measures and the International Bureau of Weights and Measures.

(2) Although the use of metric measurement standards in the United States has been authorized by law since 1866 (Act of July 28, 1866; 14 Stat. 339), this Nation today is the only industrially developed nation which has not established a national policy of committing itself and taking steps to facilitate conversion to the metric system.

(Pub. L. 94–168, § 2, Dec. 23, 1975, 89 Stat. 1007.)

REFERENCES IN TEXT

Act of July 28, 1866; 14 Stat. 339, referred to in par. (2), is predecessor of R.S. § 3569 authorizing use of the metric system and classified to section 204 of this title.

SHORT TITLE

Section 1 of Pub. L. 94–168 provided: "That this Act [which enacted this subchapter] may be cited as the 'Metric Conversion Act of 1975'."

### § 205b. Declaration of policy.

It is therefore declared that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States and to establish a United States Metric Board to coordinate the voluntary conversion to the metric system. (Pub. L. 94–168, § 3, Dec. 23, 1975, 89 Stat. 1007.)

### § 205c. Definitions.

As used in this subchapter, the term—

(1) "Board" means the United States Metric Board, established under section 205d of this title;

(2) "engineering standard" means a standard which prescribes (A) a concise set of conditions and requirements that must be satisfied by a material, product, process, procedure, convention, or test method; and (B) the physical, functional, performance and/or conformance characteristics thereof;

(3) "international standard or recommendation" means an engineering standard or recommendation which is (A) formulated and promulgated by an international organization and (B) recommended for adoption by individual nations as a national standard; and

(4) "metric system of measurement" means the International System of Units as established by the General Conference of Weights and Measures in 1960 and as interpreted or modified for the United States by the Secretary of Commerce.

(Pub. L. 94–168, § 4, Dec. 23, 1975, 89 Stat. 1007.)

### § 205d. United States Metric Board.

(a) Establishment.

There is established, in accordance with this section, an independent instrumentality to be known as a United States Metric Board.

(b) Membership; Chairman; appointment of members; term of office; vacancies.

The Board shall consist of 17 individuals, as follows:

(1) the Chairman, a qualified individual who shall be appointed by the President, by and with the advice and consent of the Senate;

(2) sixteen members who shall be appointed by the President, by and with the advice and consent of the Senate, on the following basis—

(A) one to be selected from lists of qualified individuals recommended by engineers and organizations representative of engineering interests;

(B) one to be selected from lists of qualified individuals recommended by scientists, the scientific and technical community, and organizations representative of scientists and technicians;

(C) one to be selected from a list of qualified individuals recommended by the National Association of Manufacturers or its successor;

(D) one to be selected from lists of qualified individuals recommended by the United States Chamber of Commerce, or its successor, retailers, and other commercial organizations;

(E) two to be selected from lists of qualified individuals recommended by the American Federation of Labor and Congress of Industrial organizations or its successor, who are representative of workers directly affected by metric conversion, and by other organizations representing labor;

(F) one to be selected from a list of qualified individuals recommended by the National Governors Conference, the National Council of

State Legislatures, and organizations representative of State and local government;

(G) two to be selected from lists of qualified individuals recommended by organizations representative of small business;

(H) one to be selected from lists of qualified individuals representative of the construction industry;

(I) one to be selected from a list of qualified individuals recommended by the National Conference on Weights and Measures and standards making organizations;

(J) one to be selected from lists of qualified individuals recommended by educators, the educational community, and organizations representative of educational interests; and

(K) four at-large members to represent consumers and other interests deemed suitable by the President and who shall be qualified individuals.

As used in this subsection, each "list" shall include the names of at least three individuals for each applicable vacancy. The terms of office of the members of the Board first taking office shall expire as designated by the President at the time of nomination; five at the end of the 2d year; five at the end of the 4th year; and six at the end of the 6th year. The term of office of the Chairman of such Board shall be 6 years. Members, including the Chairman, may be appointed to an additional term of 6 years, in the same manner as the original appointment. Successors to members of such Board shall be appointed in the same manner as the original members and shall have terms of office expiring 6 years from the date of expiration of the terms for which their predecessors were appointed. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Beginning 45 days after the date of incorporation of the Board, six members of such Board shall constitute a quorum for the transaction of any function of the Board.

**(c) Compulsory powers.**

Unless otherwise provided by the Congress, the Board shall have no compulsory powers.

**(d) Termination.**

The Board shall cease to exist when the Congress, by law, determines that its mission has been accomplished. (Pub. L. 94–168, § 5, Dec. 23, 1975, 89 Stat. 1007)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205c, 205g of this title.

**§ 205e. Functions and powers of Board.**

It shall be the function of the Board to devise and carry out a broad program of planning, coordination, and public education, consistent with other national policy and interests, with the aim of implementing the policy set forth in this subchapter. In carrying out this program, the Board shall—

(1) consult with and take into account the interests, views, and conversion costs of United States commerce and industry, including small business; science; engineering; labor; education; consumers; government agencies at the Federal, State, and local level; nationally recognized standards developing and coordinating organizations; metric conversion planning and coordinating groups; and such other individuals or groups as are considered appropriate by the Board to the carrying out of the purposes of this subchapter. The Board shall take into account activities underway in the private and public sectors, so as not to duplicate unnecessarily such activities;

(2) provide for appropriate procedures whereby various groups, under the auspices of the Board, may formulate, and recommend or suggest, to the Board specific programs for coordinating conversion in each industry and segment thereof and specific dimensions and configurations in the metric system and in other measurements for general use. Such programs, dimensions, and configurations shall be consistent with (A) the needs, interests, and capabilities of manufacturers (large and small), suppliers, labor, consumers, educators, and other interested groups, and (B) the national interest;

(3) publicize, in an appropriate manner, proposed programs and provide an opportunity for interested groups or individuals to submit comments on such programs. At the request of interested parties, the Board, in its discretion, may hold hearings with regard to such programs. Such comments and hearings may be considered by the Board;

(4) encourage activities of standardization organizations to develop or revise, as rapidly as practicable, engineering standards on a metric measurement basis, and to take advantage of opportunities to promote (A) rationalization or simplification of relationships, (B) improvements of design, (C) reduction of size variations, (D) increases in economy, and (E) where feasible, the efficient use of energy and the conservation of natural resources;

(5) encourage the retention, in new metric language standards, of those United States engineering designs, practices, and conventions that are internationally accepted or that embody superior technology;

(6) consult and cooperate with foreign governments, and intergovernmental organizations, in collaboration with the Department of State, and, through appropriate member bodies, with private international organizations, which are or become concerned with the encouragement and coordination of increased use of metric measurement units or engineering standards based on such units, or both. Such consultation shall include efforts, where appropriate, to gain international recognition for metric standards proposed by the United States, and, during the United States conversion, to encourage retention of equivalent customary units, usually by way of dual dimensions, in international standards or recommendations;

(7) assist the public through information and education programs, to become familiar with the meaning and applicability of metric terms and measures in daily life. Such programs shall include—

(A) public information programs conducted by the Board, through the use of newspapers, magazines, radio, television, and other media, and through talks before appropriate citizens' groups, and trade and public organizations;

(B) counseling and consultation by the Secretary of Health, Education, and Welfare; the Secretary of Labor; the Administrator of the Small Business Administration; and the Director of the National Science Foundation, with educational associations, State and local educational agencies, labor education committees, apprentice training committees, and other interested groups, in order to assure (i) that the metric system of measurement is included in the curriculum of the Nation's educational institutions, and (ii) that teachers and other appropriate personnel are properly trained to teach the metric system of measurement;

(C) consultation by the Secretary of Commerce with the National Conference of Weights and Measures in order to assure that State and local weights and measures officials are (i) appropriately involved in metric conversion activities and (ii) assisted in their efforts to bring about timely amendments to weights and measures laws; and

(D) such other public information activities, by any Federal agency in support of this subchapter, as relate to the mission of such agency;

(8) collect, analyze, and publish information about the extent of usage of metric measurements; evaluate the costs and benefits of metric usage; and make efforts to minimize any adverse effects resulting from increasing metric usage;

(9) conduct research, including appropriate surveys; publish the results of such research; and recommend to the Congress and to the President such action as may be appropriate to deal with any unresolved problems, issues, and questions associated with metric conversion, or usage, such problems, issues, and questions may include, but are not limited to, the impact on workers (such as costs of tools and training) and on different occupations and industries, possible increased costs to consumers, the impact on society and the economy, effects on small business, the impact on the international trade position of the United States, the appropriateness of and methods for using procurement by the Federal Goverment as a means to effect conversion to the metric system, the proper conversion or transition period in particular sectors of society, and consequences for national defense;

(10) submit anually to the Congress and to the President a report on its activities. Each such report shall include a status report on the conversion process as well as projections for the conversion process. Such report may include recommendations covering any legislation or executive action needed to implement the the[1] programs of conversion accepted by the Board. The Board may also submit such other reports and recommendations as it deems necessary; and

(11) submit to the Congress and to the President, not later than 1 year after the date of enactment of the Act making appropriations for carrying out this subchapter, a report on the need to provide an effective structural mechanism for converting customary units to metric units in statutes, regulations, and other laws at all levels of government, on a coordinated and timely basis, in response to voluntary conversion programs adopted and implemented by various sectors of society under the auspices and with the approval of the Board. If the Board determines that such a need exists, such report shall include recommendations as to appropriate and effective means for establishing and implementing such a mechanism.

(Pub. L. 94–168, § 6, Dec. 23, 1975, 89 Stat. 1008.)

[1] So in original.

**§ 205f. Duties of Board.**

In carrying out its duties under this subchapter, the Board may—

(1) establish an Executive Committee, and such other committees as it deems desirable;

(2) establish such committees and advisory panels as it deems necessary to work with the various sectors of the Nation's economy and with Federal and State governmental agencies in the development and implementation of detailed conversion plans for those sectors. The Board may reimburse, to the extent authorized by law, the members of such committees;

(3) conduct hearings at such times and places as it deems appropriate;

(4) enter into contracts, in accordance with the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties;

(5) delegate to the Executive Director such authority as it deems advisable; and

(6) perform such other acts as may be necessary to carry out the duties prescribed by this subchapter.

(Pub. L. 94–168, § 7, Dec. 23, 1975, 89 Stat. 1011.)

**§ 205g. Gifts, donations and bequests to Board.**

**(a) Authorization; deposit into Treasury and disbursement.**

The Board may accept, hold, administer, and utilize gifts, donations, and bequests of property, both real and personal, and personal services, for the purpose of aiding or facilitating the work of the Board. Gifts and bequests of money, and the proceeds from the sale of any other property received as gifts or requests, shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Board.

**(b) Federal income, estate, and gift taxation of property.**

For purpose of Federal income, estate, and gift taxation, property accepted under subsection (a) of this section shall be considered as a gift or bequest to or for the use of the United States.

**(c) Investment of moneys; disbursement of accrued income.**

Upon the request of the Board, the Secretary of the Treasury may invest and reinvest, in securities of the United States, any moneys contained in the fund authorized in subsection (a) of this section. Income accruing from such securities, and from any other property accepted to the credit of such fund, shall be dispersed upon the order of the Board.

**(d) Reversion to Treasury of unexpended funds.**

Funds not expended by the Board as of the date when it ceases to exist, in accordance with section 205d(d) of this title, shall revert to the Treasury of the United States as of such date. (Pub. L. 94–168, § 8, Dec. 23, 1975, 89 Stat. 1011.)

**§ 205h. Compensation of Board members; travel expenses.**

Members of the Board who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate not to exceed the daily rate currently being paid grade 18 of the General Schedule (under section 5332 of Title 5), including traveltime. While so serving, on the business of the Board away from their homes or regular places of business, members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, for persons employed intermittently in the Government service. Payments under this section shall not render members of the Board employees or officials of the United States for any purpose. Members of the Board who are in the employ of the United States shall be entitled to travel expenses when traveling on the business of the Board. (Pub. L. 94–168, § 9, Dec. 23, 1975, 89 Stat. 1011.)

**§ 205i. Personnel.**

**(a) Executive Director; appointment; tenure; duties.**

The board shall appoint a qualified individual to serve as the Executive Director of the Board at the pleasure of the Board. The Executive Director, subject to the direction of the Board, shall be responsible to the Board and shall carry out the metric conversion program, pursuant to the provisions of this subchapter and the policies established by the Board.

**(b) Executive Director; salary.**

The Executive Director of the Board shall serve full time and be subject to the provisions of chapter 51 and subchapter III of chapter 53 of Title 5. The annual salary of the Executive Director shall not exceed level III of the Executive Schedule under section 5314 of such title.

**(c) Staff personnel; appointment and compensation.**

The Board may appoint and fix the compensation of such staff personnel as may be necessary to carry out the provisions of this subchapter in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5.

**(d) Experts and consultants; employment and compensation; annual review of contracts.**

The Board may (1) employ experts and consultants or organizations thereof, as authorized by section 3109 of Title 5; (2) compensate individuals so employed at rates not in excess of the rate currently being paid grade 18 of the General Schedule under section 5332 of such title, including traveltime; and (3) may allow such individuals, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of such Title 5 for persons in the Government service employed intermittently: *Provided, however,* That contracts for such temporary employment may be renewed annually. (Pub. L. 94–168, § 10, Dec. 23, 1975, 89 Stat. 1012.)

**§ 205j. Financial and administrative services; source and reimbursement.**

Financial and administrative services, including those related to budgeting, accounting, financial reporting, personnel, and procurement, and such other staff services as may be needed by the Board, may be obtained by the Board from the Secretary of Commerce or other appropriate sources in the Federal Government. Payment for such services shall be made by the Board, in advance or by reimbursement, from funds of the Board in such amounts as may be agreed upon by the Chairman of the Board and by the source of the services being rendered. (Pub. L. 94–168, § 11, Dec. 23, 1975, 89 Stat. 1012.)

**§ 205k. Authorization of appropriations; availability.**

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter. Appropriations to carry out the provisions of this subchapter may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations. (Pub. L. 94–168, § 12, Dec. 23, 1975, 89 Stat. 1012.)

## SUBCHAPTER III.—STANDARD GAUGE FOR IRON AND STEEL

**§§ 206 to 208.**

CODIFICATION

Sections 206 to 208 have been designated "Subchapter III" for purposes of codification.

## SUBCHAPTER IV.—SCREW THREADS

**§§ 208a to 212.**

CODIFICATION

Sections 208a to 212 have been designated "Subchapter IV" for purposes of codification.

## SUBCHAPTER V.—STANDARDS OF ELECTRICITY

**§§ 221 to 224.**

CODIFICATION

Sections 221 to 224 have been designated "Subchapter V" for purposes of codification.

## SUBCHAPTER VI.—STANDARD BARRELS

**§§ 231 to 242.**

CODIFICATION

Sections 231 to 242 have been designated "Subchapter VI" for purposes of codification.

## SUBCHAPTER VII.—STANDARD BASKETS AND CONTAINERS

**§§ 251 to 256.**

CODIFICATION

Sections 251 to 256 have been designated "Subchapter VII" for purposes of codification.

## SUBCHAPTER VIII.—STANDARD HAMPERS, ROUND STAVE BASKETS, AND SPLINT BASKETS FOR FRUITS AND VEGETABLES

**§§ 257 to 257i.**

CODIFICATION

Sections 257 to 257i have been designated "Subchapter VIII" for purposes of codification.

## SUBCHAPTER IX.—STANDARD TIME

CODIFICATION

Sections 260 to 267 have been designated "Subchapter IX" for purposes of codification.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter, comprising the Uniform Time Act of 1966, is referred to in title 49 section 1655.

### § 260a. Advancement of time or changeover dates.

**(a) Duration of period; State exemption.**

During the period commencing at 2 o'clock antemeridian on the last Sunday of April of each year and ending at 2 o'clock antemeridian on the last Sunday of October of each year, the standard time of each zone established by sections 261 to 264 of this title, as modified by section 265 of this title, shall be advanced one hour and such time as so advanced shall for the purposes of such sections 261 to 264, as so modified, be the standard time of such zone during such period; however, (1) any State that lies entirely within one time zone may by law exempt itself from the provisions of this subsection providing for the advancement of time, but only if that law provides that the entire State (including all political subdivisions thereof) shall observe the standard time otherwise applicable during that period, and (2) any State with parts thereof in more than one time zone may by law exempt either the entire State as provided in (1) or may exempt the entire area of the State lying within any time zone.

* * * * *

(As amended Pub. L. 92–267, Mar. 30, 1972, 86 Stat. 116.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–267 authorized any State with parts thereof lying in more than one time zone to exempt by law that part of such State lying within any time zone from the provisions of this subsection providing for the advancement of time.

EMERGENCY DAYLIGHT SAVING TIME ENERGY CONSERVATION

Pub. L. 93–182, Dec. 15, 1973, 87 Stat. 707, as amended by Pub. L. 93–434, Oct. 5, 1974, 88 Stat. 1209, provided:

"That this Act [enacting this note] may be cited as the 'Emergency Daylight Saving Time Energy Conservation Act of 1973'."

"Sec. 2. The Congress hereby finds and declares—

"(1) that the United States faces severe energy shortages, especially in the winter of 1973–1974 and in the next several winters thereafter;

"(2) that various studies of governmental and nongovernmental agencies indicate that year-round daylight saving time would produce an energy saving in electrical power consumption;

"(3) that daylight saving time may yield energy savings in other areas besides electrical power consumption;

"(4) that year-round daylight saving time could serve as an incentive for further energy conservation by individuals, companies, and the various governmental entities at all levels of government, and that such energy conservation efforts could lead to greatly expanded energy savings and help meet the projected energy shortages, and that such energy conservation efforts could include but not be limited to such actions as—

"(A) lowering office, home, and store thermostats several degrees;

"(B) limiting unnecessary automobile travel and holding down the speed of necessary automobile travel;

"(C) using energy efficient automobiles;

"(D) using public transportation whenever possible;

"(E) turning off office air-conditioners and heating plants an hour earlier in the afternoon; and

"(F) limiting unnecessary use of electric lights;

"(5) that the use of year-round daylight saving time could have other beneficial effects on the public interest, including the reduction of crime, improved traffic safety, more daylight outdoor playtime for the children and youth of our Nation, greater utilization of parks and recreation areas, expanded economic opportunity through extension of daylight hours to peak shopping hours and through extension of domestic office hours to periods of greater overlap with the European Economic Community; and

"(6) that the emergency nature of an energy shortage require the temporary enactment of daylight saving time.

Sec. 3. (a) Notwithstanding the provisions of section 3(a) of the Uniform Time Act of 1966 (15 U.S.C. 260a(a)) [subsec. (a) of this section], and except as provided in subsection (e) of this section, the standard of time of each zone established by the Act of March 19, 1918 (15 U.S.C. 261–264), as modified by the Act of March 4, 1921 (15 U.S.C. 265), shall be advanced one hour and such time as so advanced shall for the purposes of such Act of March 19, 1918, as so modified, be the standard time of each such zone; except that any State with parts thereof in more than one time zone, and any State that lies entirely within one time zone and is not contiguous to any other State, may by law exempt the entire area of the State lying within one time zone from the provisions of this subsection.

"(b) Notwithstanding any other provision of law, if a State, by proclamation of its Governor, makes a finding prior to the effective date of this Act, that an exemption from the operation of subsection (a) or a realinement of time zone limits is necessary to avoid undue hardship or to conserve fuel in such State or part thereof, the President or his designee may grant an exemption or realinement to such State.

"(c) Any law in effect on October 27, 1973, adopted pursuant to section 3(a)(2) of the Uniform Time Act of 1966 [subsec. (a)(2) of this section] by a State with parts thereof in more than one time zone, or adopted pursuant to section 3(a)(1) of such Act [subsec. (a)(1) of this section] by a State that lies entirely within one time zone and is not contiguous to any other State, shall be held and considered to remain in effect as the exercise by that State of the exemption permitted by subsection (a) of this section unless that State, by law, provides that such exemption shall not apply during the effective period of this Act.

"(d) The provisions of subsections (b) and (c) of section 3 and section 7 of the Uniform Time Act of 1966 [subsecs. (b) and (c) of this section and section 267 of this title] shall apply to the provisions of this section.

"(e) During the period commencing at 8 o'clock antemeridian on the last Sunday of October 1974, and ending at 2 o'clock antemeridian on the last Sunday of February 1975, the standard time of each zone established by the Act of March 19, 1918 (15 U.S.C. 261–264), as modified by the Act of March 4, 1921 (15 U.S.C. 265)) shall be the standard time of each such zone pursuant to such Act of March 19, 1918, as so modified.

"Sec. 4. (a) The Secretary of Transportation shall, on or before June 30, 1974, submit an interim report, and on or before June 30, 1975, submit a final report, to the Congress on the operation and effects of this Act. Each such report shall give particular attention to such effects on the use of energy in the United States, traffic safety, including the safety of children traveling to and from school, and the effect on school hours. Each such report shall also include such recommendations for legislation or other action as

the Secretary may determine. The final report shall include any recommendations of the Secretary with respect to time zone limits.

"(b) The Secretary of Transportation shall consult with the departments, agencies, and instrumentalities of the United States having information or expertise with respect to the operation and effects of this Act. Each such department, agency, and instrumentality shall exercise its powers, duties, and functions in such manner as will assist in carrying out the provisions of this section.

"Sec. 5. The authority of the Secretary of Transportation, under the first section of the Act of March 19, 1918 (15 U.S.C. 261), to modify the limits of any time zone is suspended during the effective period of this Act.

"Sec. 6. Notwithstanding any other law or any regulation issued under any such law, the Federal Communications Commission shall, consistent with any existing treaty or other agreement, make such adjustment by general rules, or by interim action pending such general rules, with respect to hours of operation of daytime standard amplitude modulation broadcast stations, as may be consistent with the public interest, including the public's interest in receiving interference-free service. Such general rules, or interim action, may include variances with respect to operating power and other technical operating characteristics. Subsequent to the adoption of such general rules, they may be varied with respect to particular stations and areas because of the exigencies in each case.

"Sec. 7. This Act shall take effect at 2 o'clock antemeridian on the fourth Sunday which occurs after the date of enactment of this Act [Dec. 15, 1973] and shall terminate at 2 o'clock antemeridian on the last Sunday of April 1975."

EX. ORD. NO. 11751. EXEMPTIONS FROM DAYLIGHT SAVING TIME AND REALIGNMENTS OF TIME ZONE LIMITS

Ex. Ord. No. 11751, Dec. 15, 1973, 38 F.R. 34725, provided:

By virtue of the authority vested in me by section 3(b) of the Emergency Daylight Savings Time Energy Conservation Act of 1973 (Public Law 93–182) (hereinafter "the Act") [set out as a note under this section], section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION. 1. The Secretary of Transportation (hereinafter "the Secretary") is hereby designated and empowered to exercise the authority vested in me by section 3(b) of the Act [set out as a note under this section] to grant an exemption from section 3(a) of the Act (which establishes daylight saving time as standard time) [set out as a note under this section], or a realignment of a time zone limit, pursuant to a proclamation of a Governor of a State finding that the exemption or realignment is necessary to avoid undue hardship or to conserve fuel in the State or a part thereof.

SEC. 2. In deciding to grant or deny an exemption or realignment, the Secretary shall consider, among other things, the policy of the United States, as expressed in sections 2 and 4 of the Uniform Time Act of 1966 (80 Stat. 107, 108; 15 U.S.C. 260, 261), to promote the adoption and observance of uniform time within the standard time zones of the United States and the convenience of commerce, as well as possible energy savings, undue hardship to large segments of the population, and the possible impact on the success of and cooperation with the national energy conservation program.

SEC. 3. In carrying out his responsibilities under this order, the Secretary shall, as he deems necessary, consult with the Department of Health, Education, and Welfare, the Federal Energy Office (or any agency which hereafter may succeed to its functions), and any other interested agency and he may call upon those agencies for information and advice. Each interested department or agency shall assist the Secretary, as necessary, to carry out the provisions of this order.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 261 of this title; title 49 section 1655.

**§ 261. Zones for standard time; interstate or foreign commerce.**

SUSPENSION OF THE AUTHORITY OF THE SECRETARY OF TRANSPORTATION TO MODIFY THE LIMITS OF TIME ZONES

Authority of the Secretary of Transportation under this section to modify the limits of time zones suspended, see section 5 of Pub. L. 93–182, Dec. 15, 1973, 87 Stat. 707, set out as a note under section 260a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1655.

**§§ 262 to 267.**

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 49 section 1655.

## Chapter 7.—THE BUREAU OF STANDARDS

Sec.
278h. Availability of appropriated funds [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 278h of this title.

**§ 272. Functions of Secretary.**

The Secretary of Commerce (hereinafter referred to as the "Secretary") is authorized to undertake the following functions:

* * * * *

In carrying out the functions enumerated in this section, the Secretary is authorized to undertake the following activities and similar ones for which need may arise in the operations of Government agencies, scientific institutions, and industrial enterprises:

* * * * *

(19) the compilation and publication of general scientific and technical data resulting from the performance of the functions specified herein or from other sources when such data are of importance to scientific or manufacturing interests or to the general public, and are not available elsewhere, including demonstration of the results of the Bureau's work by exhibits or otherwise as may be deemed most effective, and including the use of National Bureau of Standards scientific or technical personnel for part-time or intermittent teaching and training activities at educational institutions of higher learning as part of and incidental to their official duties and without additional compensation other than that provided by law.

(As amended June 22, 1972, Pub. L. 92–317, § 3(b), 86 Stat. 235.)

AMENDMENTS

1972—Par. (19). Pub. L. 92–317 added provisions authorizing the use of National Bureau of Standards personnel for teaching and training activities without additional compensation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 277, 278b, 1454 of this title.

**§ 273. Functions; for whom exercised.**

The Bureau is authorized to exercise its functions for the Government of the United States and for international organizations of which the United States is a member; for governments of friendly countries; for any State or municipal government within the United States; or for any scientific soci-

ety, educational institution, firm, corporation, or individual within the United States or friendly countries engaged in manufacturing or other pursuits requiring the use of standards or standard measuring instruments: *Provided*, That the exercise of these functions for international organizations, governments of friendly countries and scientific societies, educational institutions, firms, corporations, or individuals therein shall be in coordination with other agencies of the United States Government, in particular the Department of State in respect to foreign entities. All requests for the services of the bureau shall be made in accordance with the rules and regulations established in sections 276 and 277 of this title. (As amended June 22, 1972, Pub. L. 92–317, § 3(c), 86 Stat. 235.)

AMENDMENTS

1972—Pub. L. 92–317 authorized the Bureau to extend its services to international organizations of which the United States is a member, and for governments of friendly countries in coordination with the Department of State.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 275a, 277, 278b of this title.

**§ 278d. Construction and improvement of buildings and facilities.**

Within the limits of funds which are appropriated for the National Bureau of Standards, the Secretary of Commerce is authorized to undertake such construction of buildings and other facilities and to make such improvements to existing buildings, grounds, and other facilities occupied or used by the National Bureau of Standards as are necessary for the proper and efficient conduct of the activities authorized herein: *Provided*, That no improvement shall be made nor shall any building be constructed under this authority at a cost in excess of $75,000 unless specific provision is made therefor in the appropriation concerned. (As amended June 22, 1972, Pub. L. 92–317, § 3(d), 86 Stat. 235.)

AMENDMENTS

1972—Pub. L. 92–317 substituted "$75,000" for "$40,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 278b of this title.

**§ 278e. Functions and activities.**

In the performance of the functions of the National Bureau of Standards the Secretary of Commerce is authorized to undertake the following activities: (a) The purchase, repair, and cleaning of uniforms for guards; (b) the care, maintenance, protection, repair, and alteration of Bureau buildings and other plant facilities, equipment, and property; (c) the rental of field sites and laboratory, office, and warehouse space; (d) the purchase of reprints from technical journals or other periodicals and the payment of page charges for the publication of research papers and reports in such journals; (e) the furnishing of food and shelter without repayment therefor to employees of the Government at Arctic and Antarctic stations; (f) for the conduct of observations on radio propagation phenomena in the Arctic or Antarctic regions, the appointment of employees at base rates established by the Secretary of Commerce which shall not exceed such maximum rates as may be specified from time to time in the appropriation concerned, and without regard to the civil service and classification laws and sections 5542 to 5546 of Title 5; and (g) the erection on leased property of specialized facilities and working and living quarters when the Secretary of Commerce determines that this will best serve the interests of the Government. (As amended June 22, 1972, Pub. L. 92–317, § 3(e), 86 Stat. 235.)

REFERENCES IN TEXT

The civil service laws, referred to in clause (f), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that Title.

The classification laws, referred to in clause (f), are set forth in chapter 51 and subchapter III of chapter 53 of Title 5.

CODIFICATION

Sections 5542 to 5546 of title 5, referred to in the text, were in the original "titles II and III of the Federal Employees Act of 1945". Such titles II and III were repealed in the general revision of title 5, and are now covered by sections 5542 to 5546 of title 5.

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–317 substituted "the care, maintenance, protection, repair, and alteration of Bureau buildings and other plant facilities, equipment, and property" for "the repair and alteration of buildings and other plant facilities".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 278b of this title.

**§ 278f. Fire Research Center.**

**(a) Establishment; programs of research; functions of Secretary; dissemination of information.**

There is hereby established within the Department of Commerce a Fire Research Center which shall have the mission of performing and supporting research on all aspects of fire with the aim of providing scientific and technical knowledge applicable to the prevention and control of fires. The content and priorities of the research program shall be determined in consultation with the Administrator of the National Fire Prevention and Control Administration. In implementing this section, the Secretary is authorized to conduct, directly or through contracts or grants, a fire research program, including—

(1) basic and applied fire research for the purpose of arriving at an understanding of the fundamental processes underlying all aspects of fire. Such research shall include scientific investigations of—

(A) the physics and chemistry of combustion processes;

(B) the dynamics of flame ignition, flame spread, and flame extinguishment;

(C) the composition of combustion products developed by various sources and under various environmental conditions;

(D) the early stages of fires in buildings and other structures, structural subsystems and structural components in all other types of fires, including, but not limited to, forest fires, brush

fires, fires underground, oil blowout fires, and waterborne fires, with the aim of improving early detection capability;

(E) the behavior of fires involving all types of buildings and other structures and their contents (including mobile homes and highrise buildings, construction materials, floor and wall coverings, coatings, furnishings, and other combustible materials), and all other types of fires, including forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires;

(F) the unique fire hazards arising from the transportation and use, in industrial and professional practices, of combustible gases, fluids, and materials;

(G) design concepts for providing increased fire safety consistent with habitability, comfort, and human impact in buildings and other structures; and

(H) such other aspects of the fire process as may be deemed useful in pursuing the objectives of the fire research program;

(2) research into the biological, physiological, and psychological factors affecting human victims of fire, and the performance of individual members of fire services, including—

(A) the biological and physiological effects of toxic substances encountered in fires;

(B) the trauma, cardiac conditions, and other hazards resulting from exposure to fire;

(C) the development of simple and reliable tests for determining the cause of death from fires;

(D) improved methods of providing first aid to victims of fires;

(E) psychological and motivational characteristics of persons who engage in arson, and the prediction and cure of such behavior;

(F) the conditions of stress encountered by firefighters, the effects of such stress, and the alleviation and reduction of such conditions; and

(G) such other biological, psychological, and physiological effects of fire as have significance for purposes of control or prevention of fires; and

(3) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

The Secretary shall insure that the results and advances arising from the work of the research program are disseminated broadly. He shall encourage the incorporation, to the extent applicable and practicable, of such results and advances in building codes, fire codes, and other relevant codes, test methods, fire service operations and training, and standards. The Secretary is authorized to encourage and assist in the development and adoption of uniform codes, test methods, and standards aimed at reducing fire losses and costs of fire protection.

**(b) Authorization of appropriations.**

For the purposes of this section there is authorized to be appropriated not to exceed $3,500,000 for the fiscal year ending June 30, 1975 and not to exceed $4,000,000 for the fiscal year ending June 30, 1976. (As amended Oct. 29, 1974, Pub. L. 93–498, § 18, 88 Stat. 1545.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–498 substituted provisions for the establishment and functions of a Fire Research Center, content and priorities of research program, dissemination of the results and advances arising from such research, and the development of uniform codes, for provisions authorizing the Secretary to conduct investigations of fires, research into the causes and nature of fires, methods of fire prevention, fire information services, educational and training programs, and demonstration projects.

Subsec. (b). Pub. L. 93–498 substituted authorization of appropriations for authorization of the Secretary to support by contracts or grants the development of fire safety and fire protection engineering or science curriculums, and fire safety courses, seminars, or other instructional materials and aids for those curriculums.

EX. ORD. NO. 11654. FEDERAL FIRE COUNCIL

Ex. Ord. No. 11654, Mar. 13, 1972, 37 F.R. 5361, provided:

By virtue of the authority vested in me as President of the United States, and in furtherance of the purpose and policy of the Fire Research and Safety Act of 1968 (15 U.S.C. 278f–278g), it is hereby ordered as follows:

SECTION 1. The Federal Fire Council, an advisory agency in matters relating to the protection of Federal employees and property from fire, which was established within the General Services Administration by Executive Order No. 7397 of June 20, 1936, as amended by Executive Order No. 10257 of June 23, 1951, is hereby transferred to and established in the Department of Commerce. The Federal Fire Council, hereinafter referred to as the Council, shall, in the exercise of its functions, be responsible to the Secretary of Commerce. The Secretary or his designee shall serve as Chairman of the Council.

SEC. 2. Members of the Council, who shall serve without additional compensation, shall be officers or employees of the various departments and agencies of the Federal Government, and of the Government of the District of Columbia designated by the respective heads thereof. Each department and agency, and the Government of the District of Columbia, shall be entitled to designate one member of the Council and may designate such additional members as the governing body of the Council may authorize.

SEC. 3. The Council shall have a governing body composed of the Chairman of the Council, who shall also serve as its Chairman, and representatives of the Secretaries of the Interior, Health, Education, and Welfare, Housing and Urban Development, the Army, the Navy, and the Air Force and of the Administrator of General Services. The Chairman shall appoint such other officers and committees as he may deem necessary to carry out the functions of the Council.

SEC. 4. The Council is authorized to develop standards, procedures, and forms, and, on request, to conduct surveys or such other investigations as may be necessary to determine what measures should be taken to safeguard life and property from the hazards of fire, including review of plans for new construction. The Council is also authorized to make such independent studies of Federal buildings and property as it may deem desirable from the standpoint of fire protection and to maintain a record of fire losses on Government property.

SEC. 5. The Council shall report the results of such investigations and studies to the head of the agency concerned, together with its recommendations.

SEC. 6. In case of fires involving Government records, the agency concerned should notify the National Archives and Records Service of the General Services Administration and obtain its advice as to methods by which the maximum salvage of the records involved may be secured.

SEC. 7. In carrying out their functions under this order, the Council, its governing body, and the Secretary of

Commerce shall consult, as appropriate, with the Federal Advisory Council on Occupational Safety and Health established by Executive Order No. 11612 of July 26, 1971 [set out as a note under section 7902 of Title 5, Government Organization and Employees].

SEC. 8. Executive Orders No. 7397 of June 20, 1936, and No. 10257 of June 23, 1951, are hereby superseded.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2201 of this title.

**§ 278g. Repealed. Pub. L. 93-498, § 18, Oct. 29, 1974, 88 Stat. 1545.**

Section, act Mar. 3, 1901, ch. 872, § 17, as added Mar. 1, 1968, Pub. L. 90-259, title I, § 102, 82 Stat. 35, related to grants to states, local governments, other non-federal public agencies, and non-profit institutions, reimbursement of federal agencies, delegation of powers, advance of public moneys, cooperation of federal agencies, and issuance of rules and regulations.

**§ 278h. Availability of appropriated funds.**

Appropriations to carry out the provisions of sections 271 to 278h of this title may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations. (Mar. 3, 1901, c. 872, § 18, as added June 22, 1972, Pub. L. 92-317, § 3(a), 86 Stat. 235.)

**§ 281. Testing materials for District of Columbia.**

CODIFICATION

Section is also set out in D.C. Code, § 1-813.

## Chapter 9.—THE WEATHER BUREAU

**§ 311. Establishment.**

CHANGE OF NAME

In order to implement the provisions of Reorganization Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, which covers the administration of the National Oceanic and Atmospheric Administration, were changed by order of the Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, as follows: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey; and Weather Bureau to National Weather Service.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the note under this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

**§§ 312 to 315, 317, 318, 322, 325 to 328.**

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the notes under these sections in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

**§ 328. Transfer from other Government Departments of surplus equipment and supplies for Arctic stations.**

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of 1970 Reorg. Plan No. 2, redesignated the Bureau of the Budget as the Office of Management and Budget. See Office of Management and Budget note set out under this section in the main volume.

## Chapter 9A.—WEATHER MODIFICATION ACTIVITIES OR ATTEMPTS: REPORTING REQUIREMENT [NEW]

Sec.

330. Definitions.
330a. Report requirement; form; information; time of submission.
330b. Duties of Secretary.
(a) Records, maintenance; summaries, publication.
(b) Public availability of reports, documents, and other information.
(c) Disclosure of confidential information; prohibition; exceptions.
330c. Authority of Secretary.
(a) Information; reports and records; inspection; availability of data from any Federal agency as limitation of authority.
(b) Noncompliance; application of Attorney General; jurisdiction; orders; contempts.
330d. Violation; penalty.
330e. Authorization of appropriations.

**§ 330. Definitions.**

As used in this chapter—

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, any State or local government or any agency thereof, or any other organization, whether commercial or nonprofit, who is performing weather modification activities, except where acting solely as an employee, agent, or independent contractor of the Federal Government.

(3) The term "weather modification" means any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere.

(4) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or insular possession of the United States.

(Pub. L. 92-205, § 1, Dec. 18, 1971, 85 Stat. 735.)

**§ 330a. Report requirement; form; information; time of submission.**

No person may engage, or attempt to engage, in any weather modification activity in the United States unless he submits to the Secretary such reports with respect thereto, in such form and containing such information, as the Secretary may by rule prescribe. The Secretary may require that such reports be submitted to him before, during, and after any such activity or attempt. (Pub. L. 92-205, § 2, Dec. 18, 1971, 85 Stat. 736.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 330d of this title.

**§ 330b. Duties of Secretary.**

**(a) Records, maintenance; summaries, publication.**

The Secretary shall maintain a record of weather modification activities, including attempts, which take place in the United States and shall publish summaries thereof from time to time as he determines.

**(b) Public availability of reports, documents, and other information.**

All reports, documents, and other information received by the Secretary under the provisions of this chapter shall be made available to the public to the fullest practicable extent.

**(c) Disclosure of confidential information; prohibition; exceptions.**

In carrying out the provisions of this section, the Secretary shall not disclose any information referred to in section 1905 of Title 18 and is otherwise unavailable to the public, except that such information shall be disclosed—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) in any judicial proceeding under court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(3) to the public if necessary to protect their health and safety.

(Pub. L. 92–205, § 3, Dec. 18, 1971, 85 Stat. 736.)

**§ 330c. Authority of Secretary.**

**(a) Information; reports and records; inspection; availability of data from any Federal agency as limitation of authority.**

The Secretary may obtain from any person whose activities relate to weather modification by rule, subpena, or otherwise such information in the form of testimony, books, records, or other writings, may require the keeping and furnishing of such reports and records, and may make such inspection of the books, records, and other writings and premises and property of any person as may be deemed necessary or appropriate by him to carry out the provisions of this chapter, but this authority shall not be exercised to obtain any information with respect to which adequate and authoritative data are available from any Federal agency.

**(b) Noncompliance; application of Attorney General; jurisdiction; orders; contempts.**

In case of contumacy by, or refusal to obey a subpena served upon any person pursuant to this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the Attorney General, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Pub. L. 92–205, § 4, Dec. 18, 1971, 85 Stat. 736.)

**§ 330d. Violation; penalty.**

Any person who knowingly and willfully violates section 330a of this title, or any rule issued thereunder, shall upon conviction thereof be fined not more than $10,000. (Pub. L. 92–205, § 5, Dec. 18, 1971, 85 Stat. 736.)

**§ 330e. Authorization of appropriations.**

There are authorized to be appropriated $150,000 for the fiscal year ending June 30, 1972, and $200,000 each for the fiscal years 1973, 1974, 1975, 1976, 1977, to carry out the provisions of this chapter. (Pub. L. 92–205, § 6, Dec. 18, 1971, 85 Stat. 736, amended Pub. L. 93–436, Oct. 5, 1974, 88 Stat. 1212.)

AMENDMENTS

1974—Pub. L. 93–436 extended the authorization of appropriation of $200,000 for each of the fiscal years ending June 30, 1975, 1976, and 1977.

## Chapter 13A.—FISHING INDUSTRY

**§ 522. Monopolies or restraints of trade; service of complaint by Secretary of Commerce; hearing; order to cease and desist; jurisdiction of district court.**

If the Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Commerce may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Commerce shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Commerce shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceedings, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Commerce and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein, the court may issue a temporary writ of injunction forbidding such association from violating such order or any

part thereof. The court shall, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer, or agent thereof, engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association and such service shall be binding upon such association, the officers and members thereof. (June 25, 1934, ch. 742, § 2, 48 Stat. 1214; 1939 Reorg. Plan No. II, § 4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1531; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

TRANSFER OF FUNCTIONS

Secretary of Commerce was substituted for Secretary of the Interior in view of: the creation of the National Oceanic and Atmospheric Administration in the Department of Commerce and the Office of Administrator of such Administration; the abolition of the Bureau of Commercial Fisheries in the Interior Department and the Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in the Secretary of the Interior or the Interior Department which were administered through the Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

## Chapter 14.—RECONSTRUCTION FINANCE CORPORATION

§§ 601, 605, 606, 607, 608, 609, 611.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 50 section 98e.

## Chapter 14A.—AID TO SMALL BUSINESS

Sec.
636a. Small business disaster loans.
636b. Disaster loan interest rates.
636c. Age of applicant for disaster loans.
636d. Disaster aid to major sources of employment.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 687, 2346 of this title; title 12 section 371; title 19 sections 2345, 2346; title 42 section 5031.

### § 631. Declaration of policy.

* * * * *

(b) The assistance programs authorized by sections 636(i) and 636(j) of this title are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

(c) Further, it is the declared policy of the Congress that the Government should aid and assist victims of floods and other catastrophes, and small-business concerns which are displaced as a result of federally aided construction programs. (As amended Pub. L. 93-386, § 2(a)(1), Aug. 23, 1974, 88 Stat. 742.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93-386 added subsec. (b). Former subsec. (b) was redesignated (c).

Subsec. (c). Pub. L. 93-386 redesignated former subsec. (b) as (c).

SHORT TITLE OF 1974 AMENDMENT

Section 1 of Pub. L. 93-386 provided: "That this Act [which enacted section 694c of this title, amended this section, sections 633, 634, 636, 639, 647, 694, and 694b of this title, and sections 2855, 2942, 2949, and 2982 of Title 42, repealed sections 2901, 2902, 2905, 2906, 2906a, 2906b, 2906c, and 2907 of Title 42, and enacted provisions set out as notes under sections 633 and 694 of this title] may be cited as the 'Small Business Amendments of 1974'."

EXECUTIVE ORDER NO. 11458

Ex. Ord. No. 11458, Mar. 5, 1969, 34 F.R. 4937, set out as a note under this section, which related to a national program for minority business enterprise, was superseded by Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, set out as a note under this section.

EX. ORD. NO. 11625. NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE

Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, provided:

The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.

The Office of Minority Business Enterprise, established in 1969, greatly facilitated the strengthening and expansion of our minority enterprise program. In order to take full advantage of resources and opportunities in the minority enterprise field, we now must build on this foundation. One important way of improving our efforts is by clarifying the authority of the Secretary of Commerce (a) to implement Federal policy in support of the minority business enterprise program; (b) provide additional technical and management assistance to disadvantaged business; (c) to assist in demonstration projects; and (d) to coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Functions of the Secretary of Commerce.* (a) The Secretary of Commerce (hereinafter referred to as "the Secretary") shall—

(1) Coordinate as consistent with law the plans, programs, and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.

(2) Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of Federal departments and agencies.

(3) Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the Nation in undertaking or promoting the establishment and successful operation of minority business enterprise.

(4) Within constraints of law and appropriations therefor, and according to his discretion, provide financial assistance to public and private organizations so that they may render technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special problems of minority business enterprises or otherwise to further the purposes of this order.

(b) The Secretary, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a), may—

(1) With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this order.

(2) Require a coordinated review of all proposed Federal training and technical assistance activities in direct support of the minority enterprise program to assure consistency with program goals and to avoid duplication.

(3) Convene, for purposes of coordination, meetings of the heads of such departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this order.

(4) Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the purpose of proposing, evaluating and coordinating governmental and private activities in furtherance of the objectives of this order.

(5) Confer with and advise officials of State and local governments.

(6) Provide the managerial and organizational framework through which joint or collaborative undertakings with Federal departments or agencies or private organizations can be planned and implemented.

(7) Recommend appropriate legislative or executive actions.

SEC. 2. *Advisory Council for Minority Enterprise.* (a) The Advisory Council for Minority Enterprise (hereinafter referred to as "the Council"), established by Executive Order No. 11458 of March 5, 1969, shall continue in existence under the terms of this order.

(b) The Council shall be composed of members appointed by the President from among persons, including members of minority groups and representatives from minority business enterprises, who are knowledgeable in this field and who are dedicated to the purposes of this order. The members shall serve for a term of two years and may be reappointed.

(c) The President shall designate one of the members of the Council as the Chairman of the Council.

(d) The Council shall meet at the call of the Secretary.

(e) The Council shall be advisory to the Secretary in which capacity it shall—

(1) Serve as a source of knowledge and information on developments in different fields and segments of our economic and social life which affect minority business enterprise.

(2) Keep abreast of plans, programs, and activities in the public and private sectors which relate to minority business enterprise, and advise the Secretary on any measures to better achieve the objectives of this order.

(3) Consider, and advise the Secretary, and such officials as he may designate, on problems and matters referred to the Council.

(f) For the purposes of Executive Order No. 11007 of February 26, 1962 [set out as a note under section 901 of Title 5, Government Organization and Employees], the Council shall be deemed to have been formed by the Secretary.

(g) Members of the Council shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701–5708) for persons in the Government service employed intermittently.

(h) The Secretary shall arranged for administrative support of the Council to the extent necessary, including use of any gifts or bequests accepted by the Department of Commerce pursuant to law.

SEC. 3. *Responsibilities of Other Federal Departments and Agencies.* (a) The head of each Federal department and agency, or a representative designated by him, when and in the manner so requested by the Secretary, shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Secretary in the performance of his functions hereunder.

(b) The head of each Federal department or agency shall, when so requested by the Secretary, designate his Under Secretary or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.

(c) The officials designated under the preceding paragraph, when so requested, shall review and report to the Secretary upon the policies and programs of the minority business enterprise program, and shall keep the Secretary informed of all proposed budgets, plans and programs of his department or agency affecting minority business enterprise.

(d) The head of each Federal department or agency, or a representative designated by him, shall, to the extent provided under regulations issued by the Secretary after consultation with the official designated in paragraph (b) above, report to the Secretary on any activity that falls within the scope of the minority business enterprise program as defined herein and in those regulations.

(e) Each Federal department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority business enterprises and to support the program herein set forth, and shall cooperate with the Secretary of Commerce in increasing the total Federal effort.

SEC. 4. *Reports.* The Secretary shall, not later than 120 days after the close of each fiscal year, submit to the President a full report of his activities hereunder during the previous fiscal year. Further, the Secretary shall, from time to time, submit to the President his recommendations for legislation or other action as he deems deisrable to promote the purposes of this order. Each Federal department or agency shall report to the Secretary as hereinabove provided on a timely basis so that the Secretary may consider such reports for his report and recommendations to the President. Each Federal department or agency shall develop and implement systematic data collection processes which will provide to the Office of Minority Business Enterprise Information Center current data helpful in evaluating and promoting the efforts herein described.

SEC. 5. *Policies and Standards.* The Secretary may establish such policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.

SEC. 6. *Definitions.* For purposes of this order, the following definitions shall apply:

(a) "Minority business enterprise" means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts.

(b) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

SEC. 7. *Construction.* Nothing in this order shall be construed as subjecting any function vested in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agent or office exclusively, or as abrogating or restricting any such function in any manner.

SEC. 8. *Prior Executive Order.* Executive Order No. 11458 of March 5, 1969, is hereby superseded.

RICHARD NIXON.

EXTENSION OF TERM OF ADVISORY COUNCIL FOR MINORITY ENTERPRISE

The term of the Advisory Council for Minority Enterprise extended until Jan. 5, 1977, unless otherwise sooner terminated, see Ex. Ord. No. 11827, Jan. 4, 1975, 40 F.R. 1217, set out as a note under section 14 of Appendix I of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 636 of this title; title 12 section 635.

**§ 633. Small Business Administration.**

* * * * *

**(b) Appointment of Administrator, Deputy Administrator, and Associate Administrators.**

The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small-business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The Administrator is authorized to appoint a Deputy Administrator and four Associate Administrators (including the Associate Administrator specified in section 671 of this title) to assist in the execution of the functions vested in the Administration. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and shall be responsible to the Administrator for the formulation of policy relating to the Administration's programs which provide assistance to minority small business concerns and in the review of the Administration's execution of such programs in light of such policy. The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

**(c) Revolving funds; disaster loan fund; business loan and investment fund; payments into funds; appropriations: allocation of unexpended balances and authorizations; limitations; reports to Congress; business-type budgets; interest on disbursements.**

(1) There are hereby established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 636(b)(1), 636(b)(2), 636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), 636(c)(2), and 636(g) of this title, including administrative expenses in connection with such functions; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 636(a), 636(b)(3), 636(e), 636(h), 636(i), and 637(a) of this title, and titles III and V of the Small Business Investment Act of 1958, including administrative expenses in connection with such functions.

(2) All repayments of loans and debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administration (A) pursuant to sections 636(b)(1), 636(b)(2), 646(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), and 636(c)(2) of this title, shall be paid into a disaster loan fund; and (B) pursuant to sections 636(a), 636(b)(3), 636(e), 636(h), 636(i), and 637(a) of this title, and titles III and V of the Small Business Investment Act of 1958, shall be paid into the business loan and investment fund.

* * * * *

(4) The total amount of loans, guarantees, and other obligations or commitments, heretofore or hereafter entered into by the Administration, which are outstanding at any one time (A) under sections 636(a), 636(b)(3), 636(e), 636(h), 636(i) and 637(a) of this title, shall not exceed $6,000,000,000; (B) under title III of the Small Business Investment Act of 1958, shall not exceed $725,000,000; (C) under title V of the Small Business Investment Act of 1958, shall not exceed $525,000,000; and (D) under section 636(i) of this title, shall not exceed $450,000,000.

* * * * *

(As amended Pub. L. 92–16, May 18, 1971, 85 Stat. 39; Pub. L. 92–320, § 1, June 27, 1972, 86 Stat. 382; Pub. L. 92–385, § 2(b), Aug. 16, 1972, 86 Stat. 556; Pub. L. 92–500, § 8(b), Oct. 18, 1972, 86 Stat. 898; Pub. L. 92–595, § 3(a), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93–237, §§ 1, 3(b), 8, Jan. 2, 1974, 87 Stat. 1023–1025; Pub. L. 93–386, §§ 2(a)(2), (3), 7, Aug. 23, 1974, 88 Stat. 742, 748.)

REFERENCES IN TEXT

Title III of the Small Business Investment Act of 1958, referred to in subsec. (c)(1), (2), (4)(B), is classified to sections 681–687j of this title.

Title V of the Small Business Investment Act of 1958, referred to in subsec. (c)(1), (2), (4)(C), is classified to sections 695 and 696 of this title.

Such titles, referred to in subsec. (c)(5), means Titles III and V of the Small Business Investment Act of 1958.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–386, § 7, in the fourth sentence increased from three to four the number of Associate Administrators authorized to be appointed and added fifth sentence authorizing one of the Associate Administrators at the time of appointment to be designated as Associate Administrator for Minority Small Business. As enacted section 7 of Pub. L. 93–386 amended the third sentence and added a fourth sentence to subsec. (b), however the amendment was executed to fourth sentence and the new sentence was added as a fifth sentence editorially since this would appear to be the probable intent of Congress.

Pub. L. 93–237, § 8, added provisions that the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Administration and that the Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents in carrying out the programs administered by the Administration.

Subsec. (c)(1). Pub. L. 93–386, § 2(a)(2), added references to sections 636(b)(8) and 636(i) of this title and struck out reference to title IV of the Economic Opportunity Act of 1964.

Pub. L. 93–237, § 3(b), substituted "636(h)" for "636(g)" in cl. (B).

Subsec. (c)(2). Pub. L. 93–386, § 2(a)(2), added references to sections 636(b)(8) and 636(i) of this title and struck out reference to title IV of the Economic Opportunity Act of 1964.

Pub. L. 93–237, § 3(b), substituted "636(h)" for "636(g)" in cl. (B).

Subsec. (c)(4). Pub. L. 93–386, § 2(a)(3), in cl. (A) substituted "636(i), and 637(a) of this title, shall not exceed $6,000,000,000" for "and 637(a) of this title, and

title IV of the Economic Opportunity Act of 1964, shall not exceed $4,875,000,000", in cl. (B) substituted "$725,000,000" for "$556,250,000", and in cl. (D) substituted "section 636(1) of this title, shall not exceed $450,000,000" for "title IV of the Economic Opportunity Act of 1964 shall not exceed $381,250,000".

Pub. L. 93–237, §§ 1, 3(b), substituted "$4,875,000,000" for "$4,300,000,000" and "636(h)" for "636(g)" in cl. (A), "$556,250,000" for "$500,000,000" in cl. (B), "$525,000,000" for "$500,000,000" in cl. (C) and "$381,250,000" for "$350,000,000" in cl. (D).

1972—Subsec. (c)(1). Pub. L. 92–595 added reference to section 636(g).

Pub. L. 92–500 made the disaster loan fund available for financing functions performed under section 636(g) of this title.

Pub L. 92–385, § 2(b)(1), added reference to section 636(b)(7).

Subsec. (c)(2). Pub. L. 92–595 added reference to section 636(g).

Pub. L. 92–385, § 2(b)(2), added reference to sections 636(b)(5), 636(b)(6), 636(b)(7).

Subsec. (c)(4). Pub. L. 92–595 added reference to section 636(g).

Pub. L. 92–320 substituted "$4,300,000,000", "$500,000,000", and "$350,000,000" for "$3,100,000,000", "$450,000,000" and "$300,000,000" respectively.

1971—Subsec. (c)(4)(A). Pub. L. 92–16 substituted "$3,100,000,000" for "$2,200,000,000".

AUDIT BY GENERAL ACCOUNTING OFFICE OF SMALL BUSINESS ADMINISTRATION; REPORT TO CONGRESS

Section 13 of Pub. L. 93–386 provided that: "The General Accounting Office is directed to conduct a full-scale audit of the Small Business Administration, including all field offices. This audit shall be submitted to the House and Senate not later than six months from the date of enactment of this Act [Aug. 23, 1974]."

NONAVAILABILITY OF UNOBLIGATED FUNDS AFTER JUNE 30, 1974

Section 1 of Pub. L. 93–237 provided in part that: "Any additional amounts authorized by this Act [amending this section and sections 636 and 639 of this title, section 1961 of Title 7, Agriculture, and section 3142–1 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 636 of this title and sections 1961 and 1969 of Title 7] which are not obligated by June 30, 1974, shall no longer be available after that date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 635, 636, 694 of this title.

### § 634. General powers.

**(a) Seal; appointment and compensation of personnel; use of other services and facilities.**

The Administration shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this chapter; to define their authority and duties; and to pay the costs of qualification of certain of them as notaries public. The Administration, with the consent of any board, commission, independent establishment, or executive department of the Government, may avail itself on a reimbursable or nonreimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this chapter.

**(b) Powers of Administrator.**

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Administrator may—

* * * * *

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with the Travel Expense Act of 1949, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 636(b) of this title from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment;

(9) accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 636(b) of this title;

(10) upon purchase by the Administration of any deferred participation entered into under section 636 of this title, continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness; and

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this chapter or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any

such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

* * * * *

**(e) Chief Counsel for Advocacy; appointment; duties.** The Administrator shall designate an individual within the Administration to be known as the Chief Counsel for Advocacy and to perform the following duties:

(1) serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other Federal agency which affects small businesses;

(2) counsel small businesses on how to resolve questions and problems concerning the relationship of the small business to the Federal Government;

(3) develop proposals for changes in the policies and activities of any agency of the Federal Government which will better fulfill the purposes of this chapter and communicate such proposals to the appropriate Federal agencies;

(4) represent the views and interests of small businesses before other Federal agencies whose policies and activities may effect small businesses; and

(5) enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services.

(As amended Pub. L. 92–310, title II, § 224(a), June 6, 1972, 86 Stat. 206; Pub. L. 93–386, §§ 3(1), 10, Aug. 23, 1974, 88 Stat. 745, 749.)

AMENDMENTS

1974—Subsecs. (b)(10), (11). Pub. L. 93–386, § 3(1), added subsecs. (b)(10) and (11).

Subsec. (e). Pub. L. 93–386, § 10, added subsec. (e).

1972—Subsec. (a). Pub. L. 92–310 eliminated provisions which authorized the Administrator to provide bonds for officers, employees, attorneys, and agents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 693 of this title.

**§ 636. Additional powers.**

**(a) Loans to small-business concerns; restrictions and limitations.** The Administration is empowered to make loans to enable small-business concerns to finance plant construction, conversion, or expanison, including the acquisition of land; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy; and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis. The foregoing powers shall be subject, however, to the following restrictions and limitations:

* * * * *

(4) Except as provided in paragraph (5), (A) no loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the revolving fund established by this chapter would exceed $350,000; (B) the rate of interest for the Administration's share of any such loan shall be the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum per annum; (C) no such loan, including renewals or extensions thereof, may be made for a period or periods exceeding ten years except that such portion of a loan made for the purpose of constructing facilities may have a maturity of fifteen years plus such additional period as is estimated may be required to complete such construction.

(5) In the case of any loan made under this subsection to a corporation formed and capitalized by a group of small-business concerns with resources provided by them for the purpose of obtaining for the use of such concerns raw materials, equipment, inventories, supplies or the benefits of research and development, or for establishing facilities for such purpose, (A) the limitation of $350,000 prescribed in paragraph (4) shall not apply, but the limit of such loan shall be $250,000 multiplied by the number of separate small businesses which formed and capitalized such corporation; (B) the rate of interest for the Administration's share of any such loan shall be the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum per annum; and (C) such loan, including renewals and extensions thereof, may not be made for a period or periods exceeding ten years except that if such loan is made for the purpose of constructing facilities it may have a maturity of twenty years plus such additional time as is required to complete such construction.

* * * * *

(8) During the fiscal year ending June 30, 1975, the Administrator shall make direct loans under this subsection in an aggregate amount of not less than $400,000,000.

**(b) Disaster loans; term; suspension of principal and interest payments; rate of interest.** The Administration also is empowered—

* * * * *

(4) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration

may determine to be necessary or appropriate to assist any small business concern in reestablishing its business if the Administration determines that such concern has suffered substantial economic injury as a result of the inability of such concern to process or market a product for human consumption because of disease or toxicity occuring in such product through natural or undermined causes: *Provided,* That loans under this paragraph include loans to persons who are engaged in the business of raising livestock (including but not limited to cattle, hogs, and poultry), and who suffer substantial economic injury as a result of animal disease; and

(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in its plant, facilities, or methods of operation to meet requirements imposed on such concern pursuant to any Federal law, any State law enacted in conformity therewith, or any regulation or order of a duly authorized, Federal, State, regional, or local agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph: *Provided,* That the maximum loan made to any small business concern under this paragraph shall not exceed the maximum loan which, under rules or regulations prescribed by the Administration, may be made to any business enterprise under paragraph (1) of this subsection; and

(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist, or to refinance the existing indebtedness of, any small business concern directly and seriously affected by the significant reduction of the scope or amount of Federal support for any project as a result of any international agreement limiting the development of strategic arms or the installation of strategic arms or strategic arms facilities, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph.

(7) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in continuing in business at its existing location, in reestablishing its business, in purchasing a new business, or in establishing a new business if the Administration determines that such concern has suffered or will suffer substantial economic injury as the result of the closing by the Federal Government of a major military installation under the jurisdiction of the Department of Defense, or as a result of a severe reduction in the scope and size of operations at a major military installation; and

(8) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist, or refinance the existing indebtedness of, any small business concern seriously and adversely affected by a shortage of fuel, electrical energy, or energy-producing resources, or by a shortage of raw or processed materials resulting from such shortages, if the Administration determines that such concern has suffered or is likely to suffer substantial economic injury without assistance under this paragraph.

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided,* That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further,* That the provisions of pargraph (1) of subsection (c) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding the provisions of any other law, and except as otherwise provided in this subsection, the interest rate on the Administration's share of any loan made under this subsection shall not exceed 3 per centum per annum, except that in the case of a loan made pursuant to paragraph (3), (5), (6), (7), or (8), the rate of interest on the Administration's share of such loan shall not be more than the higher of (A) 2¾ per centum per annum; or (B) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum per annum. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

In the administration of the disaster loan program under paragraphs (1), (2), and (4) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall be not less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other program, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

(i) with respect to a loan made in connection with a disaster occurring on or after January 1, 1971 but prior to January 1, 1972, the total amount so canceled shall not exceed $2,500, and the interest on the balance of the loan shall be at a rate of 3 per centum per annum; and

(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972 but prior to July 1, 1973, the total amount so canceled shall not exceed $5,000, and the interest on the balance of the loan shall be at a rate of 1 per centum per annnum.

With respect to any loan referred to in clause (D) which is outstanding on August 16, 1972, the Administrator shall—

(i) make such change in the interest rate on the balance of such loan as is required under that clause effective as of August 16, 1972; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 4451 of Title 42.

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan.

* * * * *

**(g) Loans to small business concerns for water pollution control facilities.**

(1) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any small business concern in affecting additions to or alterations in the equipment, facilities (including the construction of pretreatment facilities and interceptor sewers), or methods of operation of such concern to meet water pollution control requirements established under the Federal Water Pollution Control Act, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this subsection.

(2) Any such loan—

(A) shall be made in accordance with provisions applicable to loans made pursuant to subsection (b)(5) of this section, except as otherwise provided in this subsection;

(B) shall be made only if the applicant furnishes the Administration with a statement in writing from the Environmental Protection Agency or, if appropriate, the State, that such additions or alterations are necessary and adequate to comply with requirements established under the Federal Water Pollution Control Act.

(3) The Administrator of the Environmental Protection Agency shall, as soon as practicable after October 18, 1972, and not later than one hundred and eighty days thereafter, promulgate regulations establishing uniform rules for the issuance of statements for the purpose of paragraph (2)(B) of this subsection.

(4) There is authorized to be appropriated to the disaster loan fund established pursuant to section 633(c) of this title not to exceed $800,000,000 solely for the purpose of carrying out this subsection.

**(h) Loans to handicapped persons and organizations for handicapped.**

(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

(A) to assist any public or private organization—

(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of

the man-hours required for the production or provision of the commodities or services; or

(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

(2) The Administration's share of any loan made under this subsection shall not exceed $350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 633(e)(1)(B) of this title would exceed $350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That any reasonable doubt shall be resolved in favor of the applicant.

(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

**(i) Loans to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals.**

(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 631(b) of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however,* That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed $50,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: *Provided, however,* That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

(3) To insure an equitable distribution between urban and rural areas for loans between $3,500 and $50,000 made under this subsection, the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended as it shall determine necessary.

(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 639(a) of this title.

(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations—

(A) there is reasonable assurance of repayment of the loan;

(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however,* That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 shall not exceed the rate currently applicable to new loans made under section 3141 of Title 42; and

(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

(7) No financial assistance shall be extended pursuant to this subsection where the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

**(j) Financial assistance for projects providing technical or management assistance to individuals or enterprises eligible for assistance as small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals.**

(1) The Administration is authorized to provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under subsection (i) of this section, with special attention to small business located in urban areas of high concentration of unemployed or low-income individuals or owned by low-income individuals.

(2) Financial assistance under this subsection may be provided for projects, including without limitation—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) the furnishing of centralized services with regard to public services and Government programs including programs authorized under subsection (i) of this section;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives;

(E) the encouragement of the placement of subcontracts by major business with small business concerns located in urban areas of high concentration of unemployed or low-income individuals or owned by low-income individuals, including the provision of incentives and assistance to such major businesses so that they will aid in the training and upgrading of potential subcontractors or other small business concerns; and

(F) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing businesses, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small business concerns by residents of urban areas of high concentration of unemployed or low-income individuals, and to projects which are planned and carried out with the participation of local businessmen.

(4) The financial assistance authorized by this subsection includes assistance advanced by grant, agreement, or contract, but does not include the procurement of plant or equipment, or goods or services.

(5) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants with necessary adjustments on account of overpayments or underpayments.

(6) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(7) The Administration shall provide for an independent and continuing evaluation of programs under this subsection, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and types of businesses and individuals assisted, and the extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Administration shall be included in the report required by section 639(a) of this title.

(8) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, so that contracts, subcontracts, and deposits made by the Federal Government or in connection with programs aided with Federal funds are placed in such a way as to further the purposes of this subsection and of subsection (i) of this section. The Administration shall provide for the continuing evaluation of programs under this subsection and the results of such evaluation together with recommendations shall be included in the report required by section 639(a) of this title.

**(k) Functions relating to loans and financial assistance for projects providing technical or management assistance to individuals or enterprises eligible for assistance as small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals.**

In carrying out its functions under subsections (i) and (j) of this section, the Administration is authorized—

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of Title 31; and

(4) to employ experts and consultants or organizations thereof as authorized by section 3109 of Title 5, except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of $100 per diem, including traveltime; and to allow them, while away from their homes or

regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually.

(As amended Pub. L. 92–385, §§ 1(a), 2(a), Aug. 16, 1972, 86 Stat. 554, 555; Pub. L. 92–500, § 8(a), Oct. 18, 1972, 86 Stat. 898; Pub. L. 92–595, § 3(b), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93–237, §§ 2 (a), (b), 3(a), 5, 6, Jan. 2, 1974, 87 Stat. 1023, 1024; Pub. L. 93–386, §§ 2(a)(4), 3(2), 8, 9, 12, Aug. 23, 1974, 88 Stat. 742, 746, 748, 749.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (g), is classified to section 1251 et seq. of Title 33, Navigable Waters.

Title III of the Economic Opportunity Act of 1964, as amended, referred to in subsec. (i)(3), is classified to section 2841 et seq. of Title 42, The Public Health and Welfare.

The Public Works and Economic Development Act of 1965, referred to in subsec. (i)(5)(D), is classified to section 3121 et seq. of Title 42.

CODIFICATION

In subsec. (k)(4), "section 3109 of Title 5" and "section 5703 of Title 5" were substituted for "section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)" and "section 5 of such Act (5 U.S.C. 73b–2)", respectively, on authority of section 7 and 8 of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, 632, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1974—Subsec. (a)(4)(B). Pub. L. 93–386, § 8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not more than 5½ per centum per annum.

Subsec. (a)(5)(B). Pub. L. 93–386, § 8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not less than 3 nor more than 5 per centum per annum.

Subsec. (a)(8). Pub. L. 93–386, § 12, added subsec. (a)(8).

Subsec. (b)(4). Pub. L. 93–237, § 5, added proviso that loans under this paragraph include loans to persons who are engaged in the business of raising livestock and who suffer substantial economic injury as a result of animal disease.

Subsec. (b)(5), (6), (7). Pub. L. 93–237, §§ 2(a), (b), 6, consolidated into a single par. (5) the authority of the Small Business Administration contained in former pars. (5) to make loans to small business concerns to meet the requirements of the Federal Coal Mine Health and Safety Act of 1969, the Egg Products Inspection Act, the Wholesome Poultry Products Act, and the Wholesome Meat Act, and former par. (6) to make loans to small business concerns to meet the requirements of the Occupational Safety and Health Act of 1970, expanded such authority to finance structural, operational, or other changes required in order to meet standards imposed by federal laws, or by state laws enacted in conformity with federal laws, redesignated former par. (7) as par. (6), and added par. (7).

Subsec. (b)(8). Pub. L. 93–386, § 9(a), added subsec. (b)(8).

Subsec. (b). Pub. L. 93–386, § 9(b), substituted "paragraph (3), (5), (6), (7), or (8)" for "paragraph (3), (5), (6), or (7)" in the first par. following the numbered pars.

Subsec. (g). Pub. L. 93–237, § 3(a), redesignated former subsec. (g) relating to loans to handicapped persons and organizations for handicapped as subsec. (h).

Subsec. (h). Pub. L. 93–237, § 3(a), redesignated former subsec. (g) relating to loans to handicapped persons and organizations for handicapped as subsec. (h).

Subsec. (h)(2). Pub. L. 93–386, § 3(2), added "The Administration's share of" preceding "any loan".

Subsecs. (i)–(k). Pub. L. 93–386, § 2(a)(4), added subsecs. (i) to (k).

1972—Subsec. (b). Pub. L. 92–385 added par. (7), and in material following the numbered paragraphs, added provisions relating to the administration of the disaster loan program in relation to disasters occurring between January 1, 1971 and July 1, 1973.

Subsec. (g). Pub. L. 92–500 added subsec. (g), relating to loans to small business concerns for water pollution control facilities.

Subsec. (g). Pub. L. 92–595 added subsec. (g), relating to loans to handicapped persons and organizations for handicapped.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 1(b) of Pub. L. 92–385 provided that: "The last paragraph of the amendment made by subsection (a) [last paragraph of subsec. (b) of this section] shall apply only with respect to loans made on or after the date of enactment of this Act [Aug. 16, 1972]."

INTEREST RATES ON LOANS TO MEET REGULATORY STANDARDS

Section 2(d) of Pub. L. 93–237 provided that: "In no case shall the interest rate charged for loans to meet regulatory standards be lower than loans made in connection with physical disasters."

DISASTER LOANS; INTEREST RATE; CANCELLATION OF LOANS

Section 9 of Pub. L. 93–24, Apr. 20, 1973, 87 Stat. 25, provided that: "Notwithstanding the provisions of any other law, any loan made by the Small Business Administration in connection with any disaster occurring on or after the date of enactment of this Act [Apr. 20, 1973] under sections 7(b)(1), (2), or (4) of the Small Business Act (15 U.S.C. 636(b)(1), (2), or (4)) [subsec. (b)(1), (2), or (4) of this section] shall bear interest at the rate determined under section 324 of the Consolidated Farm and Rural Development Act, as amended by section 4 of this Act [section 1964 of Title 7]. No portion of any such loan shall be subject to cancellation under the provisions of any law."

ELECTION OF BENEFITS

Section 1(c) of Pub. L. 92–385 provided that: "Any person who (1) suffers any loss or damage as a result of a major disaster as determined by the President which occurred prior to the date of enactment of this Act [August 16, 1972], (2) is eligible for assistance under the amendment made by subsection (a), and (3) is otherwise eligible for benefits greater than those provided by the amendment made by subsection (a), may elect to receive such greater benefits."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 633, 634, 636a, 637, 692 of this title; title 7 sections 1964, 1969; title 19 section 2345; title 42 sections 3142–1, 4021.

### § 636a. Small business disaster loans.

(a) In the administration of the disaster loan program under section 636(b)(1), (2), and (4) of this title, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator, the Small Business Administration—

(1) to the extent such loss or damage or injury is not compensated for by insurance or otherwise (A) shall, on the part of any loan in excess of $500, cancel the principal of the loan, except that the total amount so canceled shall not exceed $2,500, except that this clause (A) shall apply only to loans made to cover losses and damage and injury resulting from major disasters as determined by the President, and (B) may defer interest payments or principal payments, or both, in whole or in part, on any loan made under this section during the first three years of the term of

the loan except that any such deferred payments shall bear interest at the rate determined under section 636b of this title.

(2) to the extent such injury, loss, or damage is not compensated for by insurance or otherwise, may grant any loan for repair, rehabilitation, or replacement of property damaged, or destroyed, without regard to whether the required financial assistance is otherwise available from private sources.

(3) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that the amount refinanced shall not exceed the amount of the physical loss sustained. Any such refinancing shall be subject to the provisions of clauses (1) and (2) of this section.

(b) Loans to which this section applies may also be made for the purpose of providing small business concerns with working capital, the payment of operating expenses, and any purpose for which loans may be made under section 636(a) of this title. (Pub. L. 91–606, title II, § 231, Dec. 31, 1970, 84 Stat. 1752; Pub. L. 92–385, § 6, Aug. 16, 1972, 86 Stat. 559.)

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970 and not as part of the Small Business Act, which comprises this chapter. Section was formerly classified to section 4451 of Title 42, The Public Health and Welfare.

AMENDMENTS

1972—Pub. L. 92–385 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Apr. 1, 1970, see section 304 of Pub. L. 91–606, set out as a note under former section 4401 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 636b, 636c of this title.

### § 636b. Disaster loan interest rates.

Any loan made under sections 636a of this title and 4452 of title 42 shall not exceed the current cost of repairing or replacing the disaster injury, loss, or damage in conformity with current codes and specifications. Any loan made under sections 636a of this title, 4452 of title 42, 3538 of title 42, and 636d of this title shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 2 per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of 6 per centum per annum. (Pub. L. 91–606, title II, § 234, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 4452 of Title 42, referred to in text, was repealed by Pub. L. 93–24, § 7, Apr. 20, 1973, 87 Stat. 25.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970 and not as part of the Small Business Act, which comprises this chapter. Section was formerly classified to section 4453 of Title 42, The Public Health and Welfare.

EFFECTIVE DAT:

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under former section 4401 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 636a, 636d of this title.

### § 636c. Age of applicant for disaster loans.

In the administration of any Federal disaster loan program under the authority of section 636a of this title, section 4452 of Title 42, or section 233 of Public Law 91–606, the age of any adult loan applicant shall not be considered in determining whether such loan should be made or the amount of such loan. (Pub. L. 91–606, title II, § 235, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 4452 of Title 42, referred to in text, was repealed by Pub. L. 93–24, § 7, Apr. 20, 1973, 87 Stat. 25.

Section 233 of Public Law 91–606, referred to in text, amended section 1820(a)(2), (f) of Title 38, Veterans' Benefits.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970 and not as part of the Small Business Act, which comprises this chapter. Section was formerly classified to section 4454 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under former section 4401 of Title 42, The Public Health and Welfare.

### § 636d. Disaster aid to major sources of employment.

(a) The Small Business Administration in the case of a nonagricultural enterprise, and the Farmers Home Administration in the case of an agricultural enterprise, are authorized to provide any industrial, commercial, agricultural, or other enterprise, which has constituted a major source of employment in an area suffering a major disaster and which is no longer in substantial operation as a result of such disaster, a loan in such amount as may be necessary to enable such enterprise to resume operations in order to assist in restoring the economic viability of the disaster area. Loans authorized by this section shall be made without regard to limitations on the size of loans which may otherwise be imposed by any other provision of law or regulations promulgated pursuant thereto.

(b) Assistance under this section shall be in addition to any other Federal disaster assistance, except that such other assistance may be adjusted or modified to the extent deemed appropriate by the Director under the authority of section 4418 of Title 42. Any loan made under this section shall be subject to the interest requirements of section 636b of this title, but the President, if he deems it necessary, may defer payments of principal and interest for a period not to exceed three years after the date of the loan. Any such deferred payments shall bear interest at the rate determined under section 636b of this title. (Pub. L. 91–606, title II, § 237, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 4418 of Title 42, referred to in subsec. (b), was repealed by Pub. L. 93–288, title VI, § 603, May 22, 1974, 88 Stat. 164. Provisions similar to former section 4418 of Title 42 are now contained in section 5155 of Title 42.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970 and not as part of the Small Business Act, which comprises this chapter. Section was formerly classified to section 4456 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 1, 1969, see, section 304 of Pub. L. 91–606, set out as a note under former section 4401 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 636b of this title.

**§ 637. Additional powers.**

TRANSFER OF FUNCTIONS

Transfer to Director of Action of functions of Small Business Administration under subsec. (b) of this section insofar as they relate to individuals or groups of persons cooperating with it in the furtherance of the purposes of this section, such individuals or groups of persons, in providing technical and managerial aids to small concerns, remaining subject to direction of Small Business Administration, see section 2(a)(3) of 1971 Reorg. Plan No. 1, eff. July 1, 1971, 36 F.R. 11181, 85 Stat. 819, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 5032, 5059.

**§ 639. Reporting requirements and agency cooperation.**

**(a) Annual reports to President and Congressional officers.**

The Administration shall, as soon as practicable each fiscal year make a comprehensive annual report to the President, the President of the Senate, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal year. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved.

**(b) Report of expenditures in conduct of principal activities.**

The Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business, and to the House Select Committee To Conduct a Study and Investigation of the Problems of Small Business, as soon as practicable each fiscal year, showing as accurately as possible for each such period the amount of funds appropriated to it that it has expended in the conduct of each of its principal activities such as lending, procurement, contracting, and providing technical and managerial aids.

* * * * *

**(g) Annual report of employee conduct complaints received or acted upon and investigations undertaken by Administration.**

The Administration shall transmit, not later than December 31 of each year, to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking and Currency of the House of Representatives a sealed report with respect to—

(1) complaints alleging illegal conduct by employees of the Administration which were received or acted upon by the Administration during the preceding fiscal year; and

(2) investigations undertaken by the Administration, including external and internal audits and security and investigation reports.

(As amended Pub. L. 93–237, § 7, Jan. 2, 1974, 87 Stat. 1025; Pub. L. 93–386, § 4, Aug. 23, 1974, 88 Stat. 746; Pub. L. 93–608, § 3(4), (5), Jan. 2, 1975, 88 Stat. 1972.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–608, § 3(4), substituted "fiscal" for "calendar" in two places and struck out provisions requiring report to contain information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation and other information deemed appropriate by the Administration.

Subsec. (b). Pub. L. 93–608, § 3(5), substituted "as soon as practicable each fiscal year" for "on December 31 of each year".

1974—Subsec. (a). Pub. L. 93–237 substituted provisions requiring the Administration to make comprehensive annual reports to the President and Congressional Officers as soon as practicable describing the state of the small business in the Nation and the states, the operations of the Administration, and recommendations for legislation, for provisions requiring the Administration to make reports on Dec. 31 of each year to the President and Congressional Officers.

Subsec. (g). Pub. L. 93–386 added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 636, 637, 687 of this title.

**§ 641. Transfer to Administration of other functions, powers, and duties.**

EX. ORD. NO. 11871. TRANSFER OF SCORE AND ACE PROGRAMS FROM ACTION AGENCY TO SMALL BUSINESS ADMINISTRATION

Ex. Ord. No. 11871, July 18, 1975, 40 F.R. 30915, provided:

By virtue of the authority vested in me by Section 12 of the Small Business Act (72 Stat. 394, 15 U.S.C. 641) [this section], the Domestic Volunteer Service Act of 1973 (87 Stat. 394, 42 U.S.C. 4951 *et seq.*), Section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. All functions, powers, and duties vested in the ACTION Agency or its Director under Title III of the Domestic Volunteer Service Act of 1973 (87 Stat. 404, 42 U.S.C. 5031, *et seq.*), which relate to a Service Corps of Retired Executives ("SCORE") and an Active Corps of Executives ("ACE") are hereby transferred to the Small Business Administration.

SEC. 2. All the functions, powers, and duties vested in the ACTION Agency or its Director under Title IV of the Domestic Volunteer Service Act of 1973 (87 Stat. 405, 42 U.S.C. 5041, *et seq.*), which are incidental to or necessary for the performance of the functions, powers, and duties transferred by Section 1 of this Order, are hereby transferred to the Small Business Administration.

SEC. 3. Nothing in this Order shall preclude the ACTION Agency or its Director from continuing, establishing, or conducting volunteer programs to carry out his other responsibilities as provided for in Title III or Title IV of the Domestic Volunteer Service Act of 1973 [sections

5031 et seq. and 5041 et seq. of Title 42, The Public Health and Welfare].

SEC. 4. The authority of the President under Section 12 of the Small Business Act (15 U.S.C. 641) [this section] to provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds in connection with the transfers provided by this Order is hereby delegated to the Director of the Office of Management and Budget, who shall take such action as he deems appropriate to enable the proper performance of the functions, powers, and duties transferred by this Order.

SEC. 5. The rights, privileges, and disabilities attaching to volunteers under Title III and Title IV of the Domestic Volunteer Service Act of 1973 [sections 5031 et seq. and 5041 et seq. of Title 42, The Public Health and Welfare], and to Federal employees otherwise entitled to Civil Service protection and transferred hereunder, shall not be otherwise affected by this transfer.

SEC. 6. This Order shall be effective on the fifteenth day of July, 1975.

GERALD R. FORD.

**§ 647. Duplication of activities of other Federal departments or agencies.**

The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government and nothing contained in this chapter shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this chapter. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from appointment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred. (As amended Pub. L. 93–386, § 5, Aug. 23, 1974, 88 Stat. 746.)

AMENDMENTS

1974—Pub. L. 93–386 added provision authorizing the refusal of loan applications and the denial of loans, for purposes of this section, to be deemed nonduplication of activities.

## Chapter 14B.—SMALL BUSINESS INVESTMENT PROGRAM

SUBCHAPTER III.—SMALL BUSINESS INVESTMENT COMPANIES

Sec.
687l. Interest rate on debentures [New].
687j. Extension of benefits to joint ownership companies [New].

SUBCHAPTER IV-A.—GUARANTEES

PART B.—SURETY BOND GUARANTEES

694c. Revolving fund for surety bond guarantees [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 80a–18, 1691c of this title.

### SUBCHAPTER I.—GENERAL PROVISIONS

**§ 652. Definitions.**

As used in this chapter—

* * * * *

(3) the terms "small business investment company", "company", and "licensee" mean a company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681 of this title;

* * * * *

(7) the term "license" means a license issued by the Administration as provided in section 681 of this title.

(As amended Pub. L. 92–595, § 2(a), Oct. 27, 1972, 86 Stat. 1314.)

AMENDMENTS

1972—Par. (3). Pub. L. 92–595 substituted "section 681" for "section 681(c)".

Par. (7). Pub. L. 92–595 substituted "section 681" for "section 681(c)".

SHORT TITLE OF 1972 AMENDMENT

Section 1 of Pub. L. 92–595 provided: "That this Act [enacting sections 687l and 687j of this title and amending sections 80a–18, 633, 636, 662, 681, 683, 684, and 686 of this title] may be cited as the 'Small Business Investment Act Amendments of 1972'."

### SUBCHAPTER III.—SMALL BUSINESS INVESTMENT COMPANIES

**§ 681. Organization.**

* * * * * *

**(d) Companies financing disadvantaged persons.**

Notwithstanding any other provision of this chapter, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, and may be licensed by the Administration to operate under the provisions of this chapter. (As amended Pub. L. 92–595, § 2(b), Oct. 27, 1972, 86 Stat. 1314.)

AMENDMENTS

1972—Subsec. (d). Pub. L. 92–595 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 662, 683, 687j of this title.

**§ 682. Capital requirements.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 2985a.

**§ 683. Borrowing operations.**

**(a) Authority to issue obligations.**

Each small business investment company shall have authority to borrow money and to issue its debenture bonds, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administration may prescribe.

**(b) Debentures.**

To encourage the formation and growth of small business investment companies the Administration is authorized (but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms) when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith

and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 per centum, plus such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes. The debentures shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) The total amount of debentures purchased or guaranteed and outstanding at any one time from a company which does not qualify under the terms of paragraph (2) of this subsection, shall not exceed 200 percent of the combined private paid-in capital and paid-in surplus of such company. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $15,000,000.

(2) The total amount of debentures which may be purchased or guaranteed and outstanding at any one time from a company not complying with section 681(d) of this title, which has investments or legal commitments of 65 per centum or more of its total funds available for investment in small business concerns invested or committed in venture capital, and which has combined private paid-in capital and paid-in surplus of $500,000 or more shall not exceed 300 per centum of its combined private paid-in capital and paid-in surplus. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $20,000,000. Such additional purchases or guarantees which the Administration makes under this paragraph shall contain conditions to insure appropriate maintenance by the company receiving such assistance of the described ratio during the period in which debentures under this paragraph are outstanding.

(3) Outstanding amounts of financial assistance provided to a company by the Administration prior to the effective date of the Small Business Investment Act Amendment of 1967 shall be deducted from the maximum amount of debentures which the Administration would otherwise be authorized to purchase or guarantee under this subsection. For purposes of this subsection, the term "venture capital" includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing.

**(c) Purchase and guarantee operations of Administration.**

Subject to the following conditions, the Administration is authorized to purchase preferred securities, and to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by small business investment companies operating under authority of section 681 (d) of this title. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection.

The Administration may purchase—

(1) shares of nonvoting stock (or other securities having similar characteristics), provided—

(i) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

(ii) on liquidation or redemption, the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration may require the preferred payment of the difference between dividends paid thereon and cumulative dividends payable at a rate equal to the interest rate determined pursuant to subsection (b) of this section for debentures with a term of fifteen years, without interest on such difference;

(iii) the purchase price shall be at par value and, in any one sale, $50,000 or more; and

(iv) the amount of such securities purchased and outstanding at any one time shall not exceed (A) from a company having combined private paid-in capital and paid-in surplus of less than $300,000 and licensed on or before October 13, 1971, the amount of combined private paid-in capital and paid-in surplus invested after such date, nor (B) from any company having combined private paid-in capital and paid-in surplus of $300,000 or more but less than $500,000, the amount of its combined private paid-in capital and paid-in surplus in excess of $300,000, nor (C) from any company having combined private paid-in capital and paid-in surplus of $500,000 or more, the amount of its combined private paid-in capital and paid-in surplus.

The Administration may purchase or guarantee—

(2) debentures subordinated pursuant to subsection (b) of this section (other than securities purchased under paragraph (1) of this subsection (c)), provided—

(i) such debentures are issued for a term of not to exceed fifteen years;

(ii) the interest rate is determined pursuant to subsection (b) of this section and section 687i of this title; and

(iii) the amount of debentures purchased or guaranteed and outstanding at ony one time pursuant to this paragraph (2) from a company having combined private paid-in capital and paid-in surplus of less than $500,000 shall not exceed 200 per centum of its combined private

paid-in capital and paid-in surplus less the amount of preferred securities outstanding under paragraph (1) of this subsection, nor from a company having combined private paid-in capital and paid-in surplus of $500,000 or more, 300 percentum of its combined private paid-in capital and paid-in surplus less the amount of such preferred securities.

(3) debentures purchased and outstanding pursuant to subsection (b) of this section may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(iii) of this subsection (c).

(4) the Administration may require, as a condition of the purchase or guarantee of any securities in excess of 200 per centum of the combined private paid-in capital and paid-in surplus of a company, that the company maintains a percentage of its total funds available for investment in small business concerns invested or legally committed in venture capital (as defined in subsection (b) of this section) determined by the Administration to be reasonable and appropriate.

(As amended Pub. L. 92–213, § 10, Dec. 22, 1971, 85 Stat. 776; Pub. L. 92–595, § 2(c), (d), Oct. 27, 1972, 86 Stat. 1314.)

AMENDMENTS

1972—Subsec. (b)(1). Pub. L. 92–595, § 2(c)(1), (2), substituted "combined private paid-in capital" for "combined paid-in capital" and "$15,000,000" for "$7,500,000".

Subsec. (b)(2). Pub. L. 92–595, § 2(c)(3), substituted provisions relating to the purchase of debentures from companies not complying with section 681(d) of this title having investments or legal commitments of 65 per cent or more and whose combined private paid-in capital and paid-in surplus is $500,000 or more for provisions relating to such purchase from companies having investments or legal commitments of 65 per cent or more and whose combined paid-in capital and paid-in surplus is $1,000,000 or more, and increased the maximum amount of outstanding debentures from $10,000,000 to $20,000,000.

Subsec. (c). Pub. L. 92–595, § 2(d), added subsec. (c).

1971—Subsec. (b). Pub. L. 92–213 added provision for a guaranty authority for the Administration and inserted requirement that such guaranty authority of the Administration be exercised only when authorized in appropriation Acts, authorized the purchase or guaranty on such terms as the Administration deems appropriate pursuant to regulations issued by the Administration, pledged the full faith and credit of the United States to the payment of amounts required to be paid in full under such guaranty, and struck out provision authorizing Administration cooperation with banks or other lending institutions in the purchase of debentures.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 687l, 687j of this title; title 42 section 2985a.

**§ 684. Equity capital for small-business concerns.**

**(a) Function of investment companies.**

It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration.

* * * * *

(As amended Pub. L. 92–595, § 2(e), Oct. 27, 1972, 86 Stat. 1316.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–595 extended the function of small business investment companies to provide a source of equity capital to unincorporated business concerns.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 1243.

**§ 686. Aggregate limitations on amount of assistance to any single enterprise.**

(a) Without the approval of the Administration, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this chapter for any single enterprise shall not exceed 20 percent of the combined private paid-in capital and paid-in surplus of such company.

(b) Repealed. Pub. L. 92–595, § 2(f), Oct. 27, 1972, 86 Stat. 1316.

(As amended Pub. L. 92–595, § 2(f), Oct. 27, 1972, 86 Stat. 1316.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–595 substituted "combined private paid-in capital" for "combined paid-in capital".

Subsec. (b). Pub. L. 92–595 repealed subsec. (b), which enumerated the items making up the combined paid-in capital and paid-in surplus of companies licensed prior to January 1, 1968.

**§ 687. Operation and regulation of companies.**

* * * * *

**(h) Limitation on interest rates; overcharge; forfeiture; interest payment recovery.**

(1) In order to facilitate the orderly and necessary flow of long-term loans and equity funds to small business concerns, as defined in the Small Business Act, if the maximum interest rate permitted by the Small Business Administration exceeds the rate a small business investment company would be permitted to charge in the absence of this subsection, such small business investment company may in the case of business loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any such loan, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the small business investment company is located.

(2) If the rate prescribed in paragraph (1) exceeds the rate such small business investment company would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the

small business investment company taking or receiving such interest. (As amended Pub. L. 93–501, title II, § 204, Oct. 29, 1974, 88 Stat. 1559.)

REFERENCES IN TEXT

Small Business Act, referred to in subsec. (h), is classified to section 631 et seq. of this title.

AMENDMENTS

1974—Subsec. (h). Pub. L. 93–501 added subsec. (h).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–501 applicable to loans made in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law prohibiting the charging of interest at the rates provided in the amendment of this section, see section 206 of Pub. L. 93–501, set out as a note under setcion 1831a of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of 1970 Reorg. Plan No. 2, redesignated the Bureau of the Budget as the Office of Management and Budget. See Office of Management and Budget note set out under this section in the main volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 687g, 687h of this title.

**§ 687i. Interest rates on debentures.**

Notwithstanding section 683(b) of this title, the effective rate of interest after October 13, 1971, during the first five years thereafter of the term of any debenture purchased by the Administration from a small business investment company under authority of section 683(c) of this title, shall be the greater of 3 per centum or 3 percentage points below the interest rate determined pursuant to section 683(b) of this title. The Administration is authorized to apply interest paid to it by such company for the period from October 13, 1971, to October 27, 1972, without interest thereon, to interest payable after October 27, 1972. No company which has received the benefit of this section may make a distribution (other than to the Administration) unless it has first paid to the Administration an amount equal to the difference between the rate of interest payable to the Administration pursuant to the previous sentence, and the rate of interest which would have been payable pursuant to section 683(b) of this title. (Pub. L. 85–699, title III, § 317, as added Pub. L. 92–595, § 2(g), Oct. 27, 1972, 86 Stat. 1316.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 683, 687j of this title.

**§ 687j. Extension of benefits to joint ownership companies.**

The Administration is authorized to extend the benefits of sections 683(c) and 687i of this title to any small business investment company operating under authority of section 681(d) of this title, and which is owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by the Administration. (Pub. L. 85–699, title III, § 318, as added Pub. L. 92–595, § 2(g), Oct. 27, 1972, 86 Stat. 1316.)

## SUBCHAPTER IV-A.—GUARANTEES

### PART A.—LEASE GUARANTEES

**§ 694. Revolving fund for lease guarantees.**

There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purposes of this part. There are authorized to be appropriated to the fund from time to time such amounts not to exceed $10,000,000 to provide capital for the fund. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments pursuant to operations of the Administrator under this part shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Administrator shall pay from the fund into Treasury as miscellaneous receipts interest at a rate determined by the Secretary of the Treasury on the cumulative amount of appropriations available as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury, and shall not be less than a rate determined by taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of guarantees from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested. (As amended Pub. L. 93–386, § 6(a)(2), Aug. 23, 1974, 88 Stat. 747.)

AMENDMENTS

1974—Pub. L. 93–386 substituted provisions establishing within the Treasury a separate fund for guarantees available to the Administrator without fiscal year limitations as a revolving fund to carry out the purposes of this part and setting forth appropriations, deposits, expenditures, etc., of such fund, for provisions establishing a revolving fund for use by the Administration to carry out the purposes of this part and part B of this subchapter and setting forth capitalization, deposits, expenditures, etc., of such fund.

ALLOCATION OF CAPITAL PREVIOUSLY TRANSFERRED TO REVOLVING FUND; TRANSFER OF FUNDS FROM BUSINESS LOAN AND INVESTMENT REVOLVING FUND.

Section 6(b) of Pub. L. 93–386 provided that: "Unexpected [Unexpended] balances of capital previously transferred to the fund pursuant to section 403 of the Small Business Investment Act of 1958 (15 U.S.C. 694) [this section], as in effect prior to the effective date of this Act [Aug. 23, 1974], shall be allocated, together with related assets and liabilities, to the funds established by paragraphs (2) and (4) of subsection (a) of this section [amending this section and enacting section 694c of this title] in such amounts as the Administrator shall determine. In addition, the Administrator is authorized to transfer to the fund established by paragraph (4) of subsection (a) of this section [enacting section 694c of this title] not to exceed $2,000,000 from the fund established under section 4(c)(1)(B) of the Small Business Act [section 633(c)(1)(B) of this title]: *Provided*, That section

4(c)(6) [section 633(c)(6) of this title] and the last sentence of section 4(c)(5) [section 633(c)(5) of this title] shall not apply to any amounts so transferred."

PART B.—SURETY BOND GUARANTEES

**§ 694b. Authority of Administration to guarantee surety against loss for principal's breach of bond.**

**(a) Limitation of liability; conditions.**

The Administration may, in consultation with the Secretary of Housing and Urban Development and upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss, as hereinafter provided, as the result of the breach of the terms of a bid bond, payment bond, or performance bond by a principal on any contract up to $1,000,000 in amount, subject to the following conditions:

* * * * * * *

**(c) Administration of program; uniform annual fees; processing fees; bond fees; publication of program costs; study and report to Congress of economic soundness of program.**

The Administration shall administer this program on a prudent and economically justifiable basis and shall fix a uniform annual fee which it deems reasonable and necessary for any guarantee issued under this section, to be payable at such time and under such conditions as may be determined by the Administration. Such fee shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. The Administration shall also fix such uniform fees for the processing of applications for guarantees under this section as it determines are reasonable and necessary to pay administrative expenses incurred in connection therewith. Any contract of guarantee under this section shall obligate the surety to pay the Administration such portions of the bond fee as the Administration determines to be reasonable in the light of the relative risks and costs involved. Within 30 days after August 23, 1974, and at monthly intervals thereafter, the Administration shall publish the cost of the program to the Administration for the month immediately preceding the date of publication. The Administration shall conduct a study of the program in order to determine what must be done to make the program economically sound. Within one year after August 23, 1974, the Administration shall transmit a report to Congress containing a detailed statement of the findings and conclusions of the study, together with its recommendations for such legislative and administrative actions as it deems appropriate.

* * * * * * * *

**(As amended Pub. L. 93–386, §§ 6(a)(3), 11, Aug. 23, 1974, 88 Stat. 747, 749.)**

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–386, § 6(a)(3), substituted "$1,000,000" for "$500,000".

Subsec. (c). Pub. L. 93–386, § 11, added provisions relating to the administration of the program on a prudent and economically justifiable basis and provisions requiring the Administration to publish the cost of the program to the Administration, to conduct a study of the program in order to determine what must be done to make the program economically sound, and to transmit a report to Congress of the findings, conclusions, and recommendations of the study.

**§ 694c. Revolving fund for surety bond guarantees.**

There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. There are authorized to be appropriated to the fund from time to time such amounts not to exceed $35,000,000 to provide capital for the fund. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments pursuant to operations of the Administrator under this part shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Administrator shall pay from the fund into Treasury as miscellaneous receipts interest at a rate determined by the Secretary of the Treasury on the cumulative amount of appropriations available as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury, and shall not be less than a rate determined by taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of guarantees from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested. (Pub. L. 85–699, title IV, § 412, as added Pub. L. 93–386, § 6(a)(4), Aug. 23, 1974, 88 Stat. 747.)

ALLOCATION OF CAPITAL PREVIOUSLY TRANSFERRED TO REVOLVING FUND; TRANSFER OF FUNDS FROM BUSINESS LOAN AND INVESTMENT REVOLVING FUND

Allocation to revolving fund of capital previously transferred and transfer of funds to revolving fund from business loan and investment revolving fund, see section 6(b) of Pub. L. 93–386, set out as a note under section 694 of this title.

## SUBCHAPTER V.—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

**§ 696. Loans for plant construction, conversion or expansion; restrictions and limitations.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 2985a.

## Chapter 15.—ECONOMIC RECOVERY

Sec.

713a–11a. Interest prohibited when reimbursing Corporation for net realized losses [New].

**§ 713a–10. Authority to make expenditures; reserve nonadministrative expenses; cancellation of notes.**

The Commodity Credit Corporation is authorized to make such expenditures, within the limits of funds and borrowing authority available to such corporation and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 849

of Title 31, as may be necessary to carry out the programs set forth in the budget for the fiscal year 1976, and for the period July 1, 1976, through September 30, 1976, for such corporation, except as hereinafter provided:

For the fiscal year 1976, not to exceed $39,400,000 shall be available for administrative expenses of the Commodity Credit Corporation: *Provided*, That $1,000,000 and such other sums as are necessary of this authorization shall be available to support the position of Sales Manager who shall work to expand and strengthen sales of U.S. commodities in world markets (including those of the Corporation and those funded by Public Law 480) pursuant to existing authority (including that contained in the Corporation's charter and Public Law 480), and that such funds shall be used by such Sales Manager to form an agency to carry out the above activities. Such Sales Manager shall report directly to the Board of Directors of the Corporation of which the Secretary of Agriculture is a member. Such Sales Manager shall obtain, assimilate, analyze all available information on developments related to private sales, as well as those funded by the Corporation and Public Law 480, including grade and quality as sold and as delivered and shall submit quarterly reports to the appropriate committees of Congress concerning such developments: *Provided further*, That not less than 7 per centum of this authorization shall be placed in reserve to be apportioned pursuant to section 665 of Title 31, for use only in such amounts and at such times as may become necessary to carry out program operations: *Provided further*, That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, operation, maintenance, improvement, or disposition of any real or personal property belonging to the Corporation or in which it has an interest, including expenses of collections of pledged collateral, shall be considered as nonadministrative expenses for the purposes hereof.

For the period July 1, 1976, through September 30, 1976, not to exceed $9,850,000 shall be available including a contingency reserve of not less than 7 percent: *Provided*, That $250,000 and such other sums as are necessary of this authorization shall be available to support the position of Sales Manager who shall work to expand and strengthen sales of U.S. commodities in world markets (including those of the Corporation and those funded by Public Law 480) pursuant to existing authority (including that contained in the Corporation's charter and Public Law 480), and that such funds shall be used by such Sales Manager to form an agency to carry out the above activities. Such Sales Manager shall report directly to the Board of Directors of the Corporation of which the Secretary of Agriculture is a member. Such Sales Manager shall obtain, assimilate, analyze all available information on developments related to private sales, as well as those funded by the Corporation and Public Law 480, including grade and quantity as sold and as delivered and shall submit quarterly reports to the appropriate committees of Congress concerning such developments. (Pub. L. 94–122, title I, § 101, Oct. 21, 1975, 89 Stat. 652, 653.)

REFERENCES IN TEXT

Public Law 480, referred to in text, is Public Law 480 of 83rd Congress, popularly known as Agricultural Trade Development and Assistance Act of 1954, which is classified to section 1691 et seq. Title 7, Agriculture.

SIMILAR PROVISIONS

Section is from the Agriculture-Environmental and Consumer Protection Appropriation Act, 1976. Similar provisions were contained in the following prior appropriation acts:

1974—Dec. 31, 1974, Pub. L. 93–563, title I, § 101, 88 Stat. 1830.

1973—Oct. 24, 1973, Pub. L. 93–135, title I, § 101, 87 Stat. 477.

1972—Aug. 22, 1972, Pub. L. 92–399, title I, § 101, 86 Stat. 600.

1971—Aug. 10, 1971, Pub. L. 92–73, title I, § 101, 85 Stat. 190.

**§ 713a–11a. Interest prohibited when reimbursing Corporation for net realized losses.**

After June 30, 1964, the portion of borrowings from Treasury equal to the unreimbursed realized losses recorded on the books of the Commodity Credit Corporation after June 30 of the fiscal year in which such losses are realized, shall not bear interest and interest shall not be accrued or paid thereon. (Pub. L. 89–316, title III, § 301, Nov. 2, 1965, 79 Stat. 1178.)

**§ 713c–3. Same; promotion of the free flow of domestically produced fishery products.**

**(a) Transfer of funds.**

The Secretary of Agriculture shall transfer to the Secretary of Commerce each fiscal year, beginning with the fiscal year commencing July 1, 1954, and ending on June 30, 1957, from moneys made available to carry out the provisions of section 612c of Title 7, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which shall be maintained in a separate fund and used by the Secretary of Commerce (1) to promote the free flow of domestically produced fishery products in commerce by conducting a fishery educational service and fishery technological, biological and related research programs, the moneys so transferred to be also available for the purchase or other acquisition, construction, equipment, operation, and maintenance of vessels or other facilities necessary for conducting research as provided for in this section, and (2) to develop and increase markets for fishery products of domestic origin and (3) to conduct any biological, technological, or other research pertaining to American fisheries.

**(b) Transfer of vessels or equipment by agencies.**

For the purposes of this section, any agency of the United States, or any corporation wholly owned by the United States, is authorized to transfer, without reimbursement or transfer of funds, any vessels or equipment excess to its needs required by the Secretary of Commerce for the activities, studies, and research authorized herein.

**(c) Cooperation by Secretary of Commerce with other agencies, etc.; advisory committee.**

In carrying out the purposes and objectives of this section, the Secretary of Commerce is directed as far as practicable to cooperate with other appropriate agencies of the Federal Government, with State or local governmental agencies, private agencies, organizations, or individuals, having jurisdiction over or an interest in fish or fishery commodities and he is authorized to appoint an advisory committee of the American fisheries industry to advise him in the formulation of policy, rules and regulations pertaining to requests for assistance, and other matters.

**(d) Retransfer of funds for purposes of section 713c–2.**

The Secretary of Commerce is further authorized to retransfer any of the funds not to exceed $1,500,000 to be made available under this section to the Secretary of Agriculture to be used for the purposes specified in section 713c–2 of this title, and only such funds as are thus transferred shall be used for the purposes specified in section 713c–2 of this title with respect to domestically produced fishery products.

**(e) Availability of funds.**

The separate fund created for the use of the Secretary of Commerce under subsection (a) of this section and the annual accruals thereto shall be available for each year hereafter until expended by the Secretary (as amended 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

TRANSFER OF FUNCTIONS

Transfer of functions to Secretary of Commerce from Secretary of the Interior in view of: the creation of the National Oceanic and Atmospheric Administration in the Department of Commerce and the Office of Administrator of such Administration; the abolition of the Bureau of Commercial Fisheries in the Interior Department and the Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in the Secretary of the Interior or the Interior Department which were administered through the Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

### § 714c. Specific powers of Corporation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2119.

### § 714h. Officers and employees; appointment; duties.

The Secretary shall appoint such officers and employees as may be necessary for the conduct of the business of the Corporation, define their authority and duties, delegate to them such of the powers vested in the Corporation as he may determine. With the exception of experts, appointments shall be made pursuant to the civil service laws and chapter 51 and subchapter III of chapter 53 of Title 5. (June 29, 1948, ch. 704, § 10, 62 Stat. 1073; June 7, 1949, ch. 175, § 4, 63 Stat. 156; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; June 6, 1972, Pub. L. 92–310, title II, § 224(b), 86 Stat. 206.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that Title.

CODIFICATION

"Chapter 51 and subchapter III of chapter 53 of Title 5" was substituted for "the Classification Act of 1949" on authority of section 7(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1972—Pub. L. 92–310 eliminated provisions which permitted the Secretary to designate officers and employees to be bonded, and which authorized the Corporation to pay the premium on the bonds.

1949—Act Oct. 28, 1949, amended section by substituting the "Classification Act of 1949" in lieu of the "Classification Act of 1923".

Act June 7, 1949, amended section generally to permit the Secretary to appoint the officers and employees of the Corporation and to define their authority and duties.

EFFECTIVE DATE

Section as effective June 30, 1948, see note set out under section 714 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 714b, 714m, 714n of this title.

## Chapter 15B.—NATURAL GAS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 30 section 185.

## Chapter 16A.—EMERGENCY PETROLEUM ALLOCATION [NEW]

Sec.

751. Congressional findings and declaration of purpose.
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753. Mandatory allocation.
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(d) Effective date and considerations of adjusted GNP deflator and production incentive in determining adjustments in maximum weighted average first sale price by Presidential amendment to regulation; definition of adjusted GNP deflator; prerequisite for applicability of production incentive in adjustment.
(e) Submission to Congress of Presidential amendment to regulation; contents; finding to accompany additional adjustment in excess of allowable maximum; Congressional disapproval of amendment.
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(g) Presidential report to Congress on regulation in effect April 15, 1977; submission of amendment to Congress by President; criteria, time and contents of amendment; findings and supporting data; Congressional disapproval of amendment; submission of additional amendment upon disapproval; limitations on further amendment of approved amendment.
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(d) Supporting findings and statements by President to accompany submission to Congress of amendment of regulation authorizing exemptions from regulation; contents.
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760c. Direct Presidential controls on refinery operations; procedures; criteria.
760d. Presidential control of domestic oil and oil product inventories.
(a) Standby authority.
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760e. Prohibition against willful accumulation of excess crude, etc., oil during severe energy supply interruption.
760f. Allocation of asphalt; Presidential authority for amendment of regulation; subsequent exemption.
760g. Conversion date of Presidential authority from mandatory to discretionary to promulgate, etc., regulation; termination date of Presidential authority limitations; expiration date of Presidential authority to promulgate, etc., regulation or issue order; effect on pending actions.
760h. Reimbursement to States for implementation of delegated responsibilities.
(a) Authorization of President.
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(c) Report to Congress by President; contents.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 766, 793, 796 of this title; title 42 sections 1857c–10, 6263, 6272, 6391.

**§ 751. Congressional findings and declaration of purpose.**

(a) The Congress hereby determines that—

(1) shortages of crude oil, residual fuel oil, and refined petroleum products caused by inadequate domestic production, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist or are imminent;

(2) such shortages have created or will create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods; and

(3) such hardships and dislocations jeopardize the normal flow of commerce and constitute a national energy crisis which is a threat to the public health, safety, and welfare and can be averted or minimized most efficiently and effectively through prompt action by the Executive branch of Government.

(b) The purpose of this chapter is to grant to the President of the United States and direct him to exercise specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products or dislocations in their national distribution system. The authority granted under this chapter shall be exercised for the purpose of minimizing the adverse impacts of such shortages or dislocations on the American people and the domestic economy. (Pub. L. 93–159, § 2, Nov. 27, 1973, 87 Stat. 628.)

SHORT TITLE

Section 1 of Pub. L. 94–99, Sept. 29, 1975, 89 Stat. 481, provided that "This Act [amending section 753(g)(1) of this title and enacting provisions set out as notes under section 753 of this title] may be cited as the 'Emergency Petroleum Allocation Act of 1975.'"

Section 1 of Pub. L. 93–159 provided: "That this Act [enacting this chapter] may be cited as the 'Emergency Petroleum Allocation Act of 1973'."

DEFENSE DEPARTMENT REDUCTION IN CONSUMPTION OF PETROLEUM PRODUCTS; NATIONAL SECURITY AND ESSENTIAL TRAINING EXERCISES EXCEPTIONS.

Pub. L. 93–155, title VIII, § 811, Nov. 16, 1973, 87 Stat. 619, provided that: "The Congress finds that the Department of Defense, which will use, at its present rate of consumption, an estimated twelve billion gallons of petroleum products in 1973, is one of the largest single consumers of

petroleum products in the world, and that a reduction in consumption of such products by the Department of Defense would aid materially in meeting the energy shortages which the United States now faces. It is, therefore, declared to be the sense of the Congress that the Department of Defense should implement a 10 per centum reduction of its consumption of petroleum products except where such a reduction would adversely affect the national security or essential training exercises."

**§ 752. Definitions.**

For purposes of this chapter:

(1) The term "branded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products pursuant to—

(A) an agreement or contract with a refiner (or a person who controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such person), or

(B) an agreement or contract under which any such person engaged in the marketing or distributing of refined petroleum products is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or person who controls, is controlled by, or is under common control with such refiner),

but who is not affiliated with, controlled by, or under common control with any refiner (other than by means of a supply contract, or an agreement or contract described in subparagraph (A) or (B)) and who does not control such refiner.

(2) The term "nonbranded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products, but who (A) is not a refiner, (B) is not a person who controls, is controlled by, is under common control with, or is affiliated with a refiner (other than by means of a supply contract), and (C) is not a branded independent marketer.

(3) The term "independent refiner" means a refiner who (A) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to November 27, 1973; more than 70 per centum of his refinery input of domestic crude oil (or 70 per centum of his refinery input of domestic and imported crude oil) from producers who do not control, are not controlled by, and are not under common control with, such refiner, and (B) marketed or distributed in such quarter and continues to market or distribute a substantial volume of gasoline refined by him through branded independent marketers or nonbranded independent marketers.

(4) The term "small refiner" means a refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

(5) The term "refined petroleum product" means gasoline, kerosense, distillates (including Number 2 fuel oil), LPG, refined lubricating oils, or diesel fuel.

(6) The term "LPG" means propane and butane, but not ethane.

(7) The term "United States" when used in the geographic sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 93–159, § 3, Nov. 27, 1973, 87 Stat. 628.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 753, 798 of this title.

**§ 753. Mandatory allocation.**

**(a) Authority to promulgate regulations covering crude oil, residual fuel oil, and refined petroleum products.**

Not later than fifteen days after November 27, 1973, the President shall promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product, in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such regulation. Subject to subsection (d) of this section, such regulation shall take effect not later than fifteen days after its promulgation. Such regulation shall apply to all crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States.

**(b) Requisite areas of coverage for regulations; price regulations; unobtainability or curtailment of other fuels; limitations on pricing policy.**

(1) The regulation under subsection (a) of this section, to the maximum extent practicable, shall provide for—

(A) protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating, such as individual homes, apartments and similar occupied dwelling units), and the national defense;

(B) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

(C) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(D) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

(E) the allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of—

(i) fuels, and

(ii) minerals essential to the requirements of the United States,

and for required transportation related thereto;

(H) economic efficiency; and

(I) minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

(2) In specifying prices (or prescribing the manner for determining them), the regulation under subsection (a) of this section—

(A) shall provide for a dollar-for-dollar passthrough of net increases in the cost of crude oil, residual fuel oil, and refined petroleum products at all levels of distribution from the producer through the retail level;

(B) (i) shall not permit any net crude oil cost increases—

(I) which are incurred by a refiner during the calendar month immediately preceding the effective date of this paragraph, or in any month thereafter, and

(II) which are not passed through in prices charged pursuant to such regulation in the 2 calendar months following the calendar month in which such crude oil cost increases were incurred,

to be passed through by such refiner in any month subsequent to the 2 calendar months following the calendar month in which such crude oil cost increases were incurred, unless the President makes the findings specified in clause (ii) (II) (aa), and such passthrough is consistent with the requirements specified in clause (ii) (II) (bb).

(ii) shall not permit the passthrough in any month of—

(I) any net crude oil cost increases incurred by a refiner not later than the last day of the calendar month which begins two months prior to the effective date of this paragraph and not passed through by the end of the last calendar month prior to the effective date of this paragraph unless such passthrough is not in excess of 10 percent of the total amount of such increased crude oil costs not passed through as of the last day of the last calendar month prior to the effective date of the amendment promulgated under section 757(a) of this title; and

(II) any net crude oil cost increases incurred by a refiner after the effective date of this paragraph, which net crude oil cost increases were not passed through within the 2 calendar months following the calendar month in which such crude oil cost increases were incurred, unless—

(aa) the President finds, and reports to the Congress with respect to such finding, that a passthrough of such crude oil cost increases is necessary to alleviate the impact on refiners, marketers, or consumers of significant increases in costs, to provide for equitable cost recovery consistent with the attainment, to the maximum extent practicable, of the objectives specified in paragraph (1), or to avoid competitive disadvantage; and

(bb) such passthrough in any month of such crude oil cost increases is not in excess of 10 percent of the total amount of such crude oil cost increases as of the end of the calendar month in which the effective date of this paragraph occurs or any month thereafter;

(C) shall provide for the use of the same date in the computation of markup, margin, and posted price for all marketers or distributors of crude oil, residual fuel, and refined petroleum products at all levels of marketing and distribution; and

(D) shall not permit more than a direct proportionate distribution (by volume) to Number 2 oils. (Number 2 heating oil and Number 2–D diesel fuel), aviation fuel of a kerosene or naphtha type, and propane produced from crude oil, of any increased costs of crude oil incurred by a refiner; except that the President may, by amendment to the regulation under subsection (a) of this section or by order, permit deviation from such proportion distribution of costs, if the President finds that refinery operations justify such deviation and further finds that to permit such deviation is consistent with the attainment of the objectives in paragraph (1) and would not result in inequitable prices for any class of users of such product.

As used in this paragraph, the term "effective date of this paragraph" means the effective date specified in section 402(b) of the Energy Policy and Conservation Act.

(3) The President in promulgating the regulation under subsection (a) of this section shall give consideration to allocating crude oil, residual fuel oil, and refined petroleum products in a manner which results in making available crude oil, residual fuel oil, or refined petroleum products to any person whose use of fuels other than crude oil, residual fuel oil, and refined petroleum products has been curtailed by, or pursuant to a plan filed in compliance with, a rule or order of a Federal or State agency, or where such person's supply of such other fuels is unobtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency.

**(c) Pro rata reductions; Presidential reports to Congress; allocation adjustments; LPG allocation.**

(1) To the extent practicable and consistent with the objectives of subsection (b) of this section, the mandatory allocation program established under the regulation under subsection (a) of this section shall be so structured as to result in the allocation, during each period during which the regulation applies, of each refined petroleum product to each branded independent marketer, each nonbranded independent marketer, each small refiner and each independent refiner, and of crude oil to each small refiner and each independent refiner, in an amount not less than the amount sold or otherwise supplied to such marketer or refiner during the corresponding period of 1972, adjusted to provide—

(A) in the case of refined petroleum products, a pro rata reduction in the amount allocated to each person engaged in the marketing or distribution of a refined petroleum product if the aggregate amount of such product produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972; and

(B) in the case of crude oil, a pro rata reduction in the amount of crude oil allocated to each refiner if the aggregate amount produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972.

(2)(A) The President shall report to the Congress monthly, beginning not later than January 1, 1974, with respect to any change after calendar year 1972 in—

(i) the aggregate share of nonbranded independent marketers,

(ii) the aggregate share of branded independent marketers, and

(iii) the aggregate share of other persons engaged in the marketing or distributing of refined petroleum products,

of the national market or the regional market in any refined petroleum product (as such regional markets shall be determined by the President).

(B) If allocation of any increase of the amount of any refined petroleum product produced in or imported into the United States in excess of the amount produced or imported in calendar year 1972 contributes to a significant increase in any market share described in clause (i), (ii), or (iii) of subparagraph (A), the President shall by order require an equitable adjustment in allocations of such product under the regulation under subsection (a) of this section.

(3) The President shall, by order, require such adjustments in the allocations of crude oil, residual fuel oil, and refined petroleum products established under the regulation under subsection (a) of this section as may reasonably be necessary (A) to accomplish the objectives of subsection (b) of this section, or (B) to prevent any person from taking any action which would be inconsistent with such objectives.

(4) The President may, by order, require such adjustments in the allocations of refined petroleum products and crude oil established under the regulation under subsection (a) of this section as he determines may reasonably be necessary—

(A) in the case of refined petroleum products (i) to take into consideration market entry by branded independent markets and nonbranded independent marketers during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of marketing or distribution facilities of such marketers during or subsequent to calendar year 1972, and

(B) in the case of crude oil (i) to take into consideration market entry by independent refiners and small refiners during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of refining facilities of such refiners during or subsequent to calendar year 1972.

Any adjustments made under this paragraph may be made only upon a finding that, to the maximum extent practicable, the objectives of subsection (b) of this section are attained.

(5) To the extent practicable and consistent with the objectives of subsection (b) of this section, the mandatory allocation program established under the regulation under subsection (a) of this section shall not provide for allocation of LPG in a manner which denies LPG to any industrial user if no substitute for LPG is available for use by such industrial user.

**(d) Gasoline allocation; Presidential report to Congress.**

(1) The provisions of the regulation under subsection (a) of this section respecting allocation of gasoline need not take effect until thirty days after the promulgation of such regulation, except that the provisions of such regulation respecting price of gasoline shall take effect not later than fifteen days after its promulgation.

(2) If—

(A) an order or regulation under section 203(a)(3) of the Economic Stabilization Act of 1970 applies to crude oil, residual fuel oil, or a refined petroleum product and has taken effect on or before the fifteenth day after November 27, 1973, and

(B) the President determines that delay in the effective date of provisions of the regulation under subsection (a) of this section relating to such oil or product is in the public interest and is necessary to effectuate the transition from the program under such section 203(a)(3) to the mandatory allocation program required under this chapter,

he may in the regulation promulgated under subsection (a) of this section delay, until not later than thirty days after the date of the promulgation of the regulation, the effective date of the provisions of such regulation insofar as they relate to such oil or product. At the same time the President promulgates such regulation, he shall report to Congress setting forth his reasons for the action under this paragraph.

**(e) Entitlements.**

Any provision of the regulation under subsection (a) of this section—

(1) which requires the purchase of entitlements, or the payment of money through any other

similar cash transfer arrangement, the purpose of which is to reduce disparities in the crude oil acquisition costs of domestic refiners, and

(2) which is based upon the number of barrels of crude oil input, or receipts, or both, of any refiner,

shall not apply to the first 50,000 barrels per day of input, or receipts, or both, of any refiner whose total refining capacity (including the refining capacity of any person who controls, is controlled by, or is under common control with such refiner) did not exceed on January 1, 1975, and does not thereafter exceed 100,000 barrels per day. The preceding sentence shall not affect any provisions of the regulation under subsection (a) of this section with respect to the receipt by any small refiner as defined in section 752(4) of this title of payments for entitlements or any other similar cash transfer arrangement. (Pub. L. 93–159, § 4, Nov. 27, 1973, 87 Stat. 629, amended Pub. L. 93–511, Dec. 5, 1974, 88 Stat. 1608; Pub. L. 94–99, § 2, Sept. 29, 1975, 89 Stat. 481; Pub. L. 94–133, § 1, Nov. 14, 1975, 89 Stat. 694; Pub. L. 94–163, title IV, §§ 401(b)(1)–(3), 402(a), 403(a), 451, Dec. 22, 1975, 89 Stat. 946, 948.)

REFERENCES IN TEXT

Section 402(b) of the Energy Policy and Conservation Act, referred to in the provisions following subsec. (b)(2)(D), is section 402(b) of Pub. L. 94–163, which is set out as a note under this section.

The Economic Stabilization Act of 1970, referred to in subsec. (d)(2), is Pub. L. 91–379, which is set out as a note under section 1904 of Title 12, Banks and Banking.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–163, § 401(b)(2), substituted "Subject to subsection (d) of this section" for "Subject to subsection (f) of this section" and struck out "Except as provided in subsection (e) of this section" preceding "Such regulation shall apply to all crude oil".

Subsec. (b)(1)(A). Pub. L. 94–163, § 451(a), inserted reference to the production of pharmaceuticals.

Subsec. (b)(1)(G). Pub. L. 94–163, § 451(b), inserted reference to minerals essential to the requirements of the United States.

Subsec. (b)(2). Pub. L. 94–163, § 402(a), substituted "regulation under subsection (a) of this section" for "regulation shall provide for" in the provisions preceding subpar. (A), added "shall provide for" preceding "a dollar-for-dollar passthrough" and substituted "products all levels of distribution from the producer through the retail level;" for "products to all marketers or distributors at the retail level; and" in subpar. (A), added subpar. (B) and redesignated former subpar. (B) as (C), added "shall provide for" preceding "the use of the same date" in subpar. (C) as so redesignated, and added subpar. (D) and the definition of "effective date of this paragraph" following subpar. (D).

Subsec. (c). Pub. L. 94–163, § 401(b)(3), substituted "subsection (b)" for "subsections (b) and (d)" wherever appearing in pars. (1), (4), and (5).

Subsec. (d). Pub. L. 94–163, § 401(b)(1), redesignated subsec. (f) as (d). Former subsec. (d), which related to the use by users within the United States of refined petroleum products produced or refined within the United States, was repealed.

Subsec. (e). Pub. L. 94–163, §§ 401(b)(1), 403(a), added subsec. (e). Former subsec. (e), which related to crude oil prices and allocations at the producer level, was repealed.

Subsec. (f). Pub. L. 94–163, § 401(b)(1), redesignated subsec. (f) as (d).

Subsec. (g). Pub. L. 94–163, § 401(b)(1), struck out subsec. (g) which related to the termination date for regulations, amendments, and exemptions.

Subsec. (g)(1). Pub. L. 94–133 substituted "December 31, 1975" for "November 15, 1975" wherever appearing. Pub. L. 94–99 substituted "November 15, 1975" for "August 31, 1975" wherever appearing.

1974—Subsec. (g)(1). Pub. L. 93–511 substituted "August 31, 1975" for "February 28, 1975" wherever appearing therein.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 401(b)(5) of Pub. L. 94–163 provided that: "The amendments made by paragraphs (1), (2), (3), and (4) of this subsection [amending this section and repealing provisions set out as a note under section 1904 of Title 12, Banks and Banking], to the Emergency Petroleum Allocation Act of 1973, shall take effect on the effective date of the amendment to the regulation under section 4(a) [subsec. (a) of this section], required by section 8(a) of such Act [section 757(a) of this title]."

Section 402(b) of Pub. L. 94–163 provided that: "The amendment made by this section [amending subsec. (b)(2) of this section and enacting section 759 of this title], to the Emergency Petroleum Allocation Act of 1973, shall take effect on the effective date of the amendment to the regulation under section 4(a) [subsec. (a) of this section], required by section 8(a) of such Act [section 757(a) of this title]."

Section 403(b) of Pub. L. 94–163 provided that: "Subsection (a) of this section [enacting subsec. (e) of this section] shall apply with respect to payments due on or after the last day of the month during which the date of enactment of this Act [Dec. 22, 1975] occurs."

Section 463 of Pub. L. 94–163 provided that: "Except as otherwise provided, the amendments made by this Act to the Emergency Petroleum Allocation Act of 1973 [amending this section and sections 754 and 755 of this title and enacting sections 757 to 760h of this title] shall take effect as of midnight, December 15, 1975."

Section 2 of Pub. L. 94–133 provided that: "The amendments made in the first section of this Act to the Emergency Petroleum Act of 1973 [amending subsec. (g)(1) of this section] shall take effect at midnight, November 15, 1975."

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (c)(2) of this section delegated to the Administrator of the Federal Energy Administration, see section 2(b) of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of this title.

REGULATIONS; EFFECTIVE DATE

Section 3 of Pub. L. 94–99 provided that: "It is the intent of the Congress that the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 [this chapter] shall be effective for the period between August 31, 1975, and the date of enactment of this Act [Sept. 29, 1975]."

PURPOSE OF EXTENSION; STATUS QUO WITHOUT MAJOR CHANGE IN PETROLEUM PRICING POLICY; PRICE ADJUSTMENT POLICY

Section 4 of Pub. L. 94–99 provided that: "The purpose of this limited extension of the Emergency Petroleum Allocation Act [this chapter] is to provide Congress and the Executive adequate time and opportunity to reach mutual agreement on a long-term petroleum pricing policy. During the period of this extension it is the intent of the Congress that the status quo shall be maintained and the President shall institute no major change in petroleum pricing policy under section 4(g)(2) of the Act [former subsec. (g)(2) of this section] prior to November 1, 1975. Any adjustment the President may make in price shall be in accord with his policy on inflation impact statements and economic justification set forth in Executive Order Numbered 11821 [set out under section 1904 of Title 12] and in Circular Numbered A–107, January 23, 1975, Office of Management and Budget."

SENATE LEGISLATIVE CALENDAR FOR CONSIDERATION OF DISAPPROVAL RESOLUTION

Section 5 of Pub. L. 94–99 provided that: "Any Senate resolution to disapprove a Presidential decontrol proposal submitted under section 4(g)(2) [former subsec. (g)(2) of this section] shall be immediately placed upon the Senate legislative calendar and any motion by the Majority Leader or his designee thereafter to proceed to the con-

sideration of such disapproval resolution shall be decided without debate and by majority vote; and within forty-eight hours after the disapproval resolution is made the pending business or sooner if otherwise ordered by the Senate, the Chair shall direct the Clerk to call the roll on the final disposition of the disapproval resolution without any further debate or intervening motion, any other rule or provision of law notwithstanding."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 754 to 758, 760 to 760g of this title; title 42 sections 6241, 6263, 6271.

**§ 754. Administration and enforcement; delegation of authority; civil and criminal penalties.**

(a)(1) Except as provided in paragraph (2), (A) sections 205 through 207 and sections 209 through 211 of the Economic Stabilization Act of 1970 (as in effect on November 27, 1973) shall apply to the regulation promulgated under section 753(a) of this title, to any order under this chapter, and to any action taken by the President (or his delegate) under this chapter, as if such regulation had been promulgated, such order had been issued, or such action had been taken under the Economic Stabilization Act of 1970; and (B) section 212 (other than 212(b)) and 213 of such Act shall apply to functions under this chapter to the same extent such sections apply to functions under the Economic Stabilization Act of 1970.

(2) The expiration of authority to issue and enforce orders and regulations under section 218 of such Act shall not affect any authority to amend and enforce the regulation or to issue and enforce any order under this chapter, and shall not effect any authority under sections 212 and 213 insofar as such authority is made applicable to functions under this chapter.

(3)(A) Whoever violates any provision of the regulation under section 753(a) of this title, or any order under this chapter shall be subject to a civil penalty—

(i) with respect to activities relating to the production, distribution, or refining of crude oil, of not more than $20,000 for each violation;

(ii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product (other than activities entirely at the retail level), of not more than $10,000 for each violation; and

(iii) with respect to activities—

(I) entirely relating to the distribution of residual fuel oil or any refined petroleum product at the retail level, or

(II) activities not referred to in clause (i) or (ii) of [1] subclause (I) of this clause, or not more than $2,500 for each violation.

(B) Whoever willfully violates any provision of such regulation, or any such order shall be imprisoned not more than 1 year, or—

(i) with respect to activities relating to the production or refining of crude oil, shall be fined not more than $40,000 for each violation;

(ii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product (other than at the retail level), shall be fined not more than $20,000 for each violation;

(iii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product at the retail level or any other person shall be fined not more than $10,000 for each violation;

or both.

(4) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of paragraph (3), shall be subject to penalties under this subsection without regard to any penalties to which that corporation may be subject under paragraph (3) except that no such individual director, officer, or agent shall be subject to imprisonment under paragraph (3), unless he also has knowledge, or reasonably should have known, of notice of noncompliance received by the corporation from the President.

(b) The President may delegate all or any portion of the authority granted to him under this chapter to such officers, departments, or agencies of the United States, or to any State (or officer thereof), as he deems appropriate. (Pub. L. 93–159, § 5, Nov. 27, 1973, 87 Stat. 633, amended Pub. L. 94–163, title IV, § 452, Dec. 22, 1975, 89 Stat. 948.)

REFERENCES IN TEXT

The Economic Stabilization Act of 1970, referred to in text, is Pub. L. 91–379, which is set out as a note under section 1904 of Title 12, Banks and Banking.

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 94–163, § 452(1), substituted "sections 205 through 207 and sections 209 through 211" for "sections 205 through 211" in the provisions referring to the Economic Stabilization Act of 1970.

Subsec. (a)(3), (4). Pub. L. 94–163, § 452(2), added subsec. (a)(3) and (4).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–163 effective as of midnight, Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title..

DELEGATION OF FUNCTIONS

Functions of the President under this chapter delegated to the Administrator of the Federal Energy Administration, see section 2(a) of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of this title.

EXECUTIVE ORDER NO. 11748

Ex. Ord. No. 11748, Dec. 4, 1973, 38 F.R. 33575, formerly set out as a note under this section, which established the Federal Energy Office, was revoked by Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 6263, 6382.

**§ 755. Impact on other laws.**

**(a) Actions under Economic Stabilization Act of 1970.**

All action duly taken pursuant to clause (3) of the first sentence of section 203(a) of the Economic Stabilization Act of 1970 in effect immediately prior to the effective date of the regulation promulgated under section 753(a) of this title, shall continue in effect until modified pursuant to this chapter.

**(b) Preemption of State or local allocation regulations and orders.**

The regulation under section 753 of this title and and any order issued thereunder shall preempt any

[1] So in original. Probably should be "or".

provision of any program for the allocation of crude oil, residual fuel oil, or any refined petroleum product established by any State or local government if such provision is in conflict with such regulation or any such order.

**(c) Defenses.**

There shall be available as a defense to any action brought for breach of contract in any Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange crude oil, residual fuel oil, or any refined petroleum product, that such delay or failure was caused solely by compliance with the provisions of this chapter or with the regulation or any order under this chapter. (Pub. L. 93–159, § 6, Nov. 27, 1973, 87 Stat. 633, amended Pub. L. 94–163, title IV, § 453, Dec. 22, 1975, 89 Stat. 949.)

REFERENCES IN TEXT

The Economic Stabilization Act of 1970, referred to in subsec. (a) is Pub. L. 91–379, which is set out as a note under section 1904 of Title 12, Banks and Banking.

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–163 struck out provisions prohibiting any construction of the provisions of the chapter which would grant immunity from civil or criminal liability, or create defenses to actions, under the antitrust laws, and struck out provisions requiring examination by the Attorney General and Federal Trade Commission of regulation under subsec. (a) for its impact on antitrust laws, specifying the manner in which oil company personnel must confer so as to avoid antitrust violations, and making activities carried out in accordance with regulations a defense to antitrust actions.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–163 effective as of midnight, Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

**§ 756. Monitoring of program by Federal Trade Commission.**

(a) During the forty-five day period beginning on the effective date on which the regulation under section 753 of this title first takes effect, the Federal Trade Commission shall monitor the program established under such regulation; and, not later than sixty days after such effective date, shall report to the President and to the Congress respecting the effectiveness of this chapter and actions taken pursuant thereto.

(b) For purposes of carrying out this section, the Federal Trade Commission's authority, under sections 46, 49, and 50 of this title to gather and compile information and to require furnishing of information, shall extend to any individual or partnership, and to any common carrier subject to the Acts to regulate commerce (as such Acts are defined in section 44 of this title). (Pub. L. 93–159, § 7, Nov. 27, 1973, 87 Stat. 635.)

**§ 757. Oil pricing policy.**

**(a) Presidential authority to promulgate amendment to regulation establishing ceiling prices applicable to any first sale of crude oil produced in United States; resulting maximum weighted average first sale price.**

Not later than the first day of the second full calendar month following December 22, 1975, the President shall promulgate and make effective an amendment to the regulation under section 753(a) of this title which regulation, as amended, shall establish ceiling prices (or the manner of determining ceiling prices) applicable to any first sale of crude oil produced in the United States, such that the resulting actual weighted average first sale price for all such crude oil during such calendar month and each of the 39 months thereafter shall not exceed a maximum of $7.66 per barrel (hereinafter in this section referred to as the "maximum weighted average first sale price"), except as may be adjusted pursuant to this section.

**(b) Standards used in determining prices and classifications in Presidential amendment to regulation establishing ceiling prices; increase in price for any volume of old crude oil production; definition of old crude oil production.**

(1) The regulation under section 753(a) of this title, as amended pursuant to subsection (a) of this section or by any subsequent amendment thereto, may, subject to the limitations related to the maximum weighted average first sale price and other requirements of this section, provide for different ceiling prices (or manner of determining ceiling prices) for different classifications of crude oil produced in the United States. In providing for different ceiling prices (or the manner for determining such ceiling prices) and classifications for such crude oil, the President shall determine that such ceiling prices (or the manner for determining such ceiling prices) and such classifications—

(A) are administratively feasible; and

(B) are justified on the basis that such prices and such classifications are consistent with obtaining optimum production of crude oil in the United States.

(2) No amendment to the regulation under section 753(a) of this title made after December 22, 1975, may permit, in any month which begins after such date, an increase in the price for any volume of old crude oil production from any priorities,[1] unless the President finds that such amendment—

(A) will give positive incentives for (i) enhanced recovery techniques, or (ii) deep horizon development, from such properties; or

(B) is necessary to take into account declining production from such properties; and

(C) is likely to result in a level of production from such properties beyond that which would otherwise occur if no such amendment were made.

(3) As used in paragraph (2), the term "old crude oil production" means that volume of crude oil produced and sold from a property in a month which is equal to or less than the volume of old crude oil, as defined in section 212.72 of title 10, Code of Federal Regulations (as in effect on November 1, 1975), produced and sold from such property in the months of September, October, and November of 1975, divided by 3.

**(c) Periodic Presidential determination regarding actual weighted average first sale price for crude oil; adjustments in maximum weighted average first sale price by Presidential amendment to regulation.**

(1) Not later than 6 months after the effective date of the amendment promulgated under subsection (a) of this section, and not later than every 6 months

[1] So in original. Probably should be "properties".

thereafter, the President shall, on the basis of valid and reliable information (which may include information obtained by a valid and reliable sampling technique) of actual first sale prices of domestic crude oil, determine whether and the extent to which the actual weighted average first sale price for crude oil produced in the United States during any 6-month period or portion thereof for which data are available following the effective date of the amendment promulgated under subsection (a) of this section, exceeded or was less than the maximum weighted average first sale price of such crude oil specified in subsection (a) of this section as may be adjusted pursuant to this section.

(2) If the President finds, pursuant to paragraph (1) of this subsection, that the regulation under section 753(a) of this title, as amended, resulted in an actual weighted average first sale price in excess of the maximum weighted average first sale price specified in subsection (a) of this section as adjusted pursuant to this section, he shall amend the regulation to make such compensating adjustments as are necessary to result, in a corresponding period, in an actual weighted average first sale price for domestic crude oil sufficient to offset such excess.

(3) If the President finds, pursuant to paragraph (1) of this subsection, that the regulation under section 753(a) of this title, as amended, resulted in an actual weighted average first sale price less than the maximum weighted average first sale price specified in subsection (a) of this section as adjusted pursuant to this section, he may, notwithstanding the requirements of this section pertaining to such maximum weighted average first sale price, amend the regulation to make such compensating adjustments in the regulation as are necessary to offset the deficiency in a corresponding period.

**(d) Effective date and considerations of adjusted GNP deflator and production incentive in determining adjustments in maximum weighted average first sale price by Presidential amendment to regulation; definition of adjusted GNP deflator; prerequisite for applicability of production incentive in adjustment.**

(1) The amendment promulgated pursuant to subsection (a) of this section (or any subsequent amendment to the regulation under section 753(a) of this title) may provide for an adjustment to the maximum weighted average first sale price specified in subsection (a) of this section, such adjustment to begin no earlier than in the calendar month following the first month the amendment is in effect—

(A) to take into account the impact of inflation as measured by the adjusted GNP deflator; and

(B) as a production incentive;

except that any adjustment as a production incentive shall not permit an increase in the maximum weighted average first sale price in excess of 3 per centum per annum (compounded annually), unless modified pursuant to this section, and the combined effect of any such adjustments referred to in subparagraphs (A) and (B) shall not result in an increase in the maximum weighted average first sale price in excess of 10 per centum per annum (compounded annually), unless modified pursuant to this section.

(2) As used in this subsection, the term "adjusted GNP deflator" means the first revision of the quarterly percent change, seasonally adjusted at annual rates, of the most recent implicit price deflator for the gross national product which shall be computed and published for each calendar quarter by the Department of Commerce, subject to such additional modification as the President shall make to exclude therefrom any amount which he determines is attributable solely and directly to increases which occur after December 22, 1975, in prices of imported crude oil, residual fuel oil, or any refined petroleum product resulting from concerted action of two or more petroleum exporting countries.

(3) The adjustment as a production incentive referred to in paragraph (1)(B) may be made only on a finding by the President that such an adjustment is likely to provide positive incentive for—

(A) the discovery or development of high cost and high risk properties (including new wildcat properties, and properties located on the Outer Continental Shelf, properties located north of the Arctic Circle, deep wells and deep horizons in onshore or offshore properties, and properties operated by independent producers);

(B) the application of enhanced recovery techniques to producing properties to obtain a level of production higher than would otherwise occur from those properties but for such adjustment; or

(C) sustaining production from marginal wells, including production from stripper wells.

**(e) Submission to Congress of Presidential amendment to regulation; contents; finding to accompany additional adjustment in excess of allowable maximum; Congressional disapproval of amendment.**

(1) Not earlier than 90 days after the effective date of the amendment promulgated under subsection (a) of this section and not earlier than 90 days after the date of any previous submission under this subsection, the President may submit to the Congress, in accordance with the procedures specified in section 6421 of Title 42, an amendment to the regulation promulgated under section 753(a) of this title which provides for (A) a production incentive adjustment to the maximum weighted average first sale price in excess of the 3 per centum limitation specified in subsection (d)(1) of this section, (B) a combined adjustment limitation in excess of the 10 per centum limitation specified in such subsection, or (C) both.

(2) Any such amendment shall be accompanied by a finding that an additional adjustment as a production incentive, or a combined adjustment limitation greater than permitted by subsection (d)(1), or both, is necessary to provide a more adequate incentive with respect to the matters referred to in subparagraphs (A), (B), or (C) of subsection (d)(3) of this section.

(3) Any such amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

**(f) Presidential report to Congress on impact of amendment to economy and supplies; submission of amendment to Congress by President; contents; Congressional disapproval of amendment; submission of additional amendment upon disapproval; effect of no amendment to continue or modify adjustment as a production incentive.**

(1) On February 15, 1977, the President shall submit to the Congress a report containing an analysis of the impact of any amendment adopted pursuant to this section on the economy and on the supply of crude oil, residual fuel oil, and refined petroleum products.

(2) The President may submit with such report to the Congress, in accordance with the procedures specified in section 6421 of Title 42, an amendment to the regulation promulgated under section 753(a) of this title which—

(A) provides for the continuation or modification of the adjustment as a production incentive (referred to in subsection (d) of this section as may have been amended pursuant to subsection (e) of this section);

(B) provides for a modification of the combined adjustment limitation (referred to in subsection (d) of this section, as may have been amended pursuant to subsection (e) of this section); or

(C) provides for adjustments with respect to both subparagraphs (A) and (B).

(3) Such amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

(4) If any such amendment is disapproved by either House of Congress, the President may, not later than 30 days after the date of such disapproval, submit one additional amendment in accordance with paragraph (2), which amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

(5) If no amendment to continue or modify the adjustment as a production incentive takes effect, no such adjustment to the maximum weighted average first sale price thereafter may be taken into account in computing such price for any month which begins after (A) the date on which a submission could have been made under paragraph (2) but was not, or (B) the last date on which a submission was disapproved and no further submission pursuant to paragraph (4) could be made, except that the President may, pursuant to the procedures under subsection (e) of this section, submit an amendment to the regulation to provide for a prospective reinstatement of such adjustment or of a modification of such adjustment.

**(g) Presidential report to Congress on regulation in effect April 15, 1977; submission of amendment to Congress by President; criteria, time and contents of amendment; findings and supporting data; Congressional disapproval of amendment; submission of additional amendment upon disapproval; limitations on further amendment of approved amendment.**

(1) On April 15, 1977, the President shall submit to the Congress a report as to whether the regulation promulgated under section 753(a) of this title and in effect on such date will provide positive price incentives for the development of the domestic crude oil production referred to in paragraph (2)(A) without lessening needed incentives for sustaining or enhancing crude oil production in the remainder of the United States.

(2) If the President determines that a price required to provide positive price incentives for the development of the domestic crude oil production referred to in paragraph (2)(A) would, because of the maximum weighted average first sale price specified in subsection (a) of this section, as adjusted, have the effect of reducing or limiting ceiling prices permitted for crude oil produced in the remainder of the United States to levels which would result in less production of such crude oil than would otherwise occur, the President may, together with such report, or at any time thereafter not earlier than 90 days after any previous submission under this subsection, except as provided in paragraph (4), submit to the Congress in accordance with the procedures specified in section 6421 of Title 42 an amendment to the regulation promulgated under section 753(a) of this title which—

(A) excludes up to 2 million barrels a day of crude oil production transported through the trans-Alaska pipeline from the computation of the maximum weighted average first sale price specified in subsection (a) of this section; and

(B) establishes ceiling prices (or a manner of determining prices) for the first sale of crude oil production referred to in subparagraph (A) such that the actual weighted average first sale price for such production will not exceed the highest actual weighted average first sale price permitted under the regulation for significant volumes of any other classification of domestic crude oil.

(3) Any such amendment shall be accompanied by such findings and supporting rationale as the President determines justify such ceiling prices (or manner for determining such prices). Any amendment submitted to the Congress pursuant to this subsection shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

(4) If any such amendment is disapproved by either House of Congress, the President may not later than 30 days after the date of such disapproval submit one additional amendment in accordance with paragraphs (2) and (3), which amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

(5) If any amendment submitted by the President to the Congress pursuant to this subsection becomes effective, such amendment may thereafter be further amended by the President, subject to the procedures and requirements of paragraphs (2) and (3) of this subsection, except that no such further amendment shall be submitted earlier than January 1, 1978, and thereafter no earlier than 90 days after the date of any previous submission made under this paragraph.

**(h) Limitations on judicial review of amendment.**

In any judicial review of an amendment required by this section to be submitted to the Congress in accordance with the procedures specified in section

6421 of Title 42, the reviewing court may not hold unlawful or set aside any such amendment on the ground that any findings made by the President were not adequate to meet the requirements of this section or of subparagraph (A), (E), or (F) of section 706(2) of Title 5. (Pub. L. 93–159, § 8, as added Pub. L. 94–163, title IV, § 401(a), Dec. 22, 1975, 89 Stat. 941.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 753, 758, 760a, 760g of this title.

**§ 758. Passthroughs of cost price decreases; effective date.**

Not later than the first day of the second full calendar month following December 22, 1975, the regulation under section 753(a) of this title shall provide for a dollar-for-dollar passthrough in prices at all levels of distribution from the producer through the retail level of decreases in the costs of crude oil, residual fuel oil, and refined petroleum products (including decreases in costs which result from a reduction in the price of crude oil produced in the United States because of the amendment to such regulation required under section 757(a) of this title. (Pub. L. 93–159, § 9, as added Pub. L. 94–163, title IV, § 401(a), Dec. 22, 1975, 89 Stat. 946.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 760g of this title.

**§ 759. Limitations on pricing authority of President.**

The President shall have no authority, under this chapter, or under the Energy Policy and Conservation Act, to prescribe minimum prices for crude oil (or any classification thereof), residual fuel oil, or any refined petroleum product. (Pub. L. 93–159, § 10, as added Pub. L. 94–163, title IV, § 402(c), Dec. 22, 1975, 89 Stat. 947.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871. See Short Title note under section 6201 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective on the effective date of the amendment to the regulation under section 753(a) of this title required by section 757(a) of this title, see section 402(b) of Pub. L. 94–163, set out as a note under section 753 of this title.

**§ 760. Reevaluation of regulation; criteria; notice and hearing; transcript; Presidential report to Congress and promulgation of amendments to regulation.**

(a) Not later than 60 days after December 22, 1975, the President shall give appropriate notice and afford interested persons an opportunity to present written and oral data, views, and arguments respecting the appropriateness of, or the continuing need for, the application of any provision of the regulation promulgated under section 753(a) of this title as such provision relates to the attainment of the objectives specified in section 753(b)(1) of this title. A transcript shall be kept of any such oral presentations of data, views, and argument.

(b) The President shall, after consideration of such written and oral presentations and such other information as may be available to him—

(1) analyze such presentations and report thereon to the Congress within 120 days after December 22, 1975; and

(2) shall promulgate, pursuant to the limitations and authority under section 760a of this title such amendment, or amendments, to the regulation promulgated under section 753(b)(1) of this title as he determines are necessary or appropriate—

(A) to modify any provisions of such regulation in a manner which is consistent with the attainment, to the maximum extent practicable, of objectives specified in section 753(b)(1) of this title; or

(B) to eliminate any provisions of such regulation no longer necessary to provide for the attainment of such objectives.

(Pub. L. 93–159, § 11, as added Pub. L. 94–163, title IV, § 454, Dec. 22, 1975, 89 Stat. 950.)

EFFECTIVE DATE

Section effective Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

**§ 760a. Conversion mechanism to standby authorities.**

**(a) Limitations on Presidential amendments to regulation.**

The President may not amend the regulation under section 753(a) of this title in any manner which—

(1) exempts crude oil produced in the United States from any provision of such regulation required to be made a part of such regulation by section 757 of this title; or

(2) results in making such regulation, as so amended, inconsistent with any limitation or other requirement specified in section 757 of this title.

**(b) Criteria for Presidential amendment to regulation.**

Except as provided in subsection (a) of this section, the President may amend the regulation under section 753(a) of this title if he determines that such amendment is consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title and that the regulation, as amended, provides for the attainment, to the maximum extent practicable, of such objectives.

**(c) Prerequisites for promulgation of amendment to regulation authorizing exemptions from regulation; procedures; definition of refined product category; Congressional disapproval of amendment.**

(1) Any such amendment which, with respect to a class of persons or class of transactions (including transactions with respect to any market level), exempts crude oil, residual fuel oil, or any refined petroleum product or refined product category from the provisions of the regulation under section 753(a) of this title as such provisions pertain to either (A) the allocation of amounts of any such oil or product,

or (B) the specification of price or the manner for determining the price of any such oil or product, or both of the matters described in subparagraphs (A) and (B), may take effect only pursuant to the provisions of this subsection.

(2) The President shall submit any amendment referred to in paragraph (1) to the Congress in accordance with the procedures specified in section 6421 of Title 42. Any such amendment shall be accompanied by a specific statement of the President's rationale for such amendment and the matter described in subsection (d) of this section. Such an amendment—

(A) may apply only to one oil or one refined product category;

(B) may apply to the matters specified in either subparagraph (A) or (B) of paragraph (1) of this subsection, or both; and

(C) may provide for scheduled or phased implementation.

(3) As used in this section the term "refined product category" means—

(A) motor gasoline;

(B) Number 2 oils (Number 2 heating oil and Number 2–D diesel fuel);

(C) propane; or

(D) all or any portion of other refined petroleum products as a class (including natural gas liquids and natural gas liquid products, other than propane).

(4) Such an amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

**(d) Supporting findings and statements by President to accompany submission to Congress of amendment of regulation authorizing exemptions from regulation; contents.**

(1) The President shall support any amendment described in subsection (b) of this section which is transmitted to the Congress under subsection (c) of this section with a finding that such amendment is consistent with the attainment of the objectives specified in section 753(b)(1) of this title and in the case of—

(A) any exemption described in subsection (c)(1)(A) of this section, with a finding that such oil or refined product category is no longer in short supply and that exempting such oil or refined product category will not have an adverse impact on the supply of any other oil or refined petroleum product subject to this chapter; and

(B) any exemption described in subsection (c)(1)(B) of this section, with a finding that competition and market forces are adequate to protect consumers and that exempting such oil or refined product category will not result in inequitable prices for any class of users of such oil or product.

(2) Any amendment which the President submits to the Congress under subsection (c) of this section shall be accompanied—

(A) by a statement of the President's views as to the potential economic impacts (if any) of such amendment which, where practicable, shall include his views as to—

(i) the State and regional impacts of such amendment (including effects on governmental units);

(ii) the effects of such amendment on the availability of consumer goods and services; the gross national product; competition; small business; and the supply and availability of energy resources for use as fuel or as feedstock for industry; and

(iii) the effects on employment and consumer prices; and

(B) in the case of an exemption described in subsection (c)(1)(B) of this section, by an analysis of the effects of such amendment on the rate of unemployment for the United States, the Consumer Price Index for the United States, and the implicit price deflator for the gross national product.

**(e) Limitation on judicial review of amendment.**

In any judicial review of an amendment required by this section to be submitted to Congress in accordance with the procedures specified in section 6421 of Title 42, the reviewing court may not hold unlawful or set aside any such amendment on the ground that any findings made by the President were not adequate to meet the requirements of subsection (c), (d), or (g) of this section or subparagraph (A), (E), or (F), of section 706(2) of Title 5.

**(f) Presidential authority to reimpose allocation and price requirements on any exempt oil or refined product category; subsequent exemptions.**

With respect to any oil or refined product category which is exempted pursuant to the provisions of this section, the President shall have authority at any time thereafter to prescribe a regulation or issue an order respecting either the allocation of amounts, or the specification of price or the manner for determining the price, of any such oil or refined product category upon a determination by him that such regulation or order is necessary to attain, and is consistent with, the objectives specified in section 753(b)(1) of this title. Any such oil or refined product category for which allocation or price requirements are reimposed under authority of this subsection may subsequently be exempted without regard to the provisions of subsection (c) of this section.

**(g) Exemption for small refiners; modification of exemption by Presidential amendment of regulation; disapproval by Congress.**

Notwithstanding the provisions of subsection (e) of section 753 of this title, the President may, if he determines that the exemption from payments for certain small refiners required by such subsection—

(1) results in unfair economic or competitive advantage with respect to other small refiners; or

(2) otherwise has the effect of seriously impairing the President's ability to provide in the regulation under section 753(a) of this title for the attainment of the objective specified in section 753(b)(1)(D) of this title and for the attainment of those other objectives specified in section 753(b)(1) of this title;

submit, in accordance with the procedures specified in section 6421 of Title 42, an amendment to modify

the regulation under section 753(a) of this title with respect to the provisions of such regulation as they relate to such exemption. Such amendment shall not take effect if disapproved by either House of Congress under the procedures specified in such section 6421 of Title 42. (Pub. L. 93–159, § 12, as added Pub. L. 94–163, title IV, § 455, Dec. 22, 1975, 89 Stat. 950.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 760f of this title.

**§ 760b. Standby purchase authority of President.**

**(a) Amendment to regulation to import or purchase foreign oil for resale in United States.**

The President may, by amendment to the regulation under section 753(a) of this title, provide for and implement a procedure pursuant to which the United States may exercise the exclusive right to import and purchase all or any part of the crude oil, residual fuel oil, and refined petroleum products of foreign origin for resale in the United States.

**(b) Subsidy or preference to any importer, purchaser, or user prohibited.**

The authorities granted under this section shall not be used for the purpose, or with the effect, of providing a subsidy or preference to any importer, purchaser, or user.

**(c) Purchase and sale of foreign oil to be without profit or loss; exception.**

In exercising any authorities granted under this section, the President shall endeavor to buy and sell without profit or loss, except that the President may, in individual cases, sell, on a competitive bid basis, crude oil, residual fuel oil, or any refined petroleum product at a price above or below the cost of such oil or product if, in the judgment of the President, such sales may result in progress toward a lower price for oil sold in international commerce.

**(d) Submission of amendment to regulation to Congress for review: supporting explanation and findings by President to accompany submission; Congressional disapproval of amendment.**

Any amendment to the regulation proposed to be implemented under this section shall be submitted to Congress for review under section 6421 of Title 42, together with a detailed explanation of the procedure to be employed and the need therefor and shall be supported by findings by the President that the exercise of such authority is likely to reduce prices for imported oils and products. Such amendment shall not take effect if disapproved by either House of the Congress in accordance with the procedures specified in section 6421 of Title 42 and any authority to purchase shall be subject to appropriations Acts.

**(e) Submission of Presidential feasibility report to Congress; contents.**

The President shall submit, within 90 days after December 22, 1975, a report which evaluates the feasibility of reducing the price of crude oil, residual fuel oil, or refined petroleum products of foreign origin for resale in the United States by providing incentives for domestic producers who also import such oils or products into the United States, to work for the reduction of the price of such oils or products. The report shall specifically discuss whether increasing aggregate old crude oil prices by an amount related to any decrease in aggregate prices for such imported oils and products would serve as an incentive for domestic producers to reduce the price of such imported oils and products. (Pub. L. 93–159, § 13, as added Pub. L. 94–163, title IV, § 456, Dec. 22, 1975, 89 Stat. 952.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

**§ 760c. Direct Presidential controls on refinery operations; procedures; criteria.**

The President may, by amendment to the regulation under section 753(a) of this title or by order, as may be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title, require adjustments in the operations of any refinery in the United States with respect to the proportions of residual fuel oil or any refined petroleum product produced through such operations if he determines such adjustments are necessary to assure the production of residual fuel oil or any refined petroleum product in such proportions as are necessary or appropriate to provide for the attainment, to the maximum extent practicable, the objectives specified in section 753(b)(1) of this title. (Pub. L. 93–159, § 14, as added Pub. L. 94–163, title IV, § 457, Dec. 22, 1975, 89 Stat. 953.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

**§ 760d. Presidential control of domestic oil and oil product inventories.**

**(a) Standby authority.**

In addition to other authority provided for in this chapter to alleviate shortages of crude oil, residual fuel oil, and refined petroleum products, the President may, if he finds an existing or impending regional or national supply shortage of any fuel, by amendment to the regulation under section 753(a) of this title or by order, consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title, require adjustments in the amounts of crude oil, residual fuel oir or any refined petroleum product which are held in inventory by persons who are engaged in the business of importing, producing, refining, marketing, or distributing such oils or products.

**(b) Exercise of authority.**

The authority specified in subsection (a) of this section may be exercised to require either—

(1) a distribution from such inventories to specified persons or classes of persons at specified rates of distribution or to specified levels of inventory accumulation; or

(2) the accumulation of inventories at specified rates of accumulation or to specified levels,

as the President determines may be necessary or appropriate to provide for the attainment, to the maximum extent practicable, of the objectives of section

753(b)(1) of this title, or as the President determines may be necessary or appropriate to carry out the obligations of the United States under the international energy program, as defined in section 6202 of Title 42.

**(c) Maintenance of inventories required under standby authority.**

The authority specified in subsection (a) of this section may require the maintenance of inventories at levels greater or lesser than such person's normal business or operating requirements; except that such amounts shall not exceed the amount of oil or product, as the case may be, such person would use or distribute during any 90-day period of peak usage and in no case may the requirement to accumulate inventories be applied to any person in a manner which would necessitate such person making physical additions to storage facilities in order to comply with any such rule or order. (Pub. L. 93–159, § 15, as added Pub. L. 94–163, title IV, § 458, Dec. 22, 1975, 89 Stat. 953.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 760e of this title.

**§ 760e. Prohibition against willful accumulation of excess crude, etc., oil during severe energy supply interruption.**

Except as may be otherwise provided with respect to persons engaged in the business of producing, refining, distributing, or marketing crude oil, residual fuel oil, or any refined petroleum product pursuant to section 760d of this title or pursuant to requirements under section 6236 of Title 42 (relating to the Industrial Strategic Petroleum Reserve), the regulation under section 753(a) of this title shall prohibit any person, during a severe energy supply interruption (as defined in section 6202 of Title 42) from willfully accumulating crude oil, residual fuel oil, or any refined petroleum product in inventories, or otherwise, in amounts which are in excess of such person's reasonable needs (as such term shall be defined in such regulation). (Pub. L. 93–159, § 16, as added Pub. L. 94–163, title IV, § 459, Dec. 22, 1975, 89 Stat. 954.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

**§ 760f. Allocation of asphalt; Presidential authority for amendment of regulation; subsequent exemption.**

(a) The President may amend the regulation under section 753(a) of this title to require, in a manner which he finds is consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title, the allocation of asphalt in amounts specified in (or determined in a manner prescribed by), or at prices specified in (or determined in a manner prescribed by) such amendment to the regulation, or both.

(b) If the President exercises the authority under this section, he may thereafter amend the regulation under section 753(a) of this title to exempt asphalt from such regulation without regard to the provisions of section 760a of this title. (Pub. L. 93–159, § 17, as added Pub. L. 94–163, title IV, § 460, Dec. 22, 1975, 89 Stat. 955.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

**§ 760g. Conversion date of Presidential authority from mandatory to discretionary to promulgate, etc., regulation; termination date of Presidential authority limitations; expiration date of Presidential authority to promulgate, etc., regulation or issue order; effect on pending actions.**

Notwithstanding any other provision of this chapter, at midnight on the conclusion of the 40th month in which the amendment under section 757(a) of this title is in effect, the President's authority to promulgate, make effective, and amend a regulation pursuant to section 753(a) of this title shall become discretionary rather than mandatory, and the limitations on the President's authority contained in sections 753(b)(2), 757 and 758 of this title shall terminate. The authority to promulgate and amend any regulation or to issue any order under this chapter shall expire at midnight September 30, 1981, but such expiration shall not affect any action or pending proceedings, administrative, civil, or criminal, not finally determined on such date, nor any administrative, civil, or criminal action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date. (Pub. L. 93–159, § 18, as added Pub. L. 94–163, title IV, § 461, Dec. 22, 1975, 89 Stat. 955.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

**§ 760h. Reimbursement to States for implementation of delegated responsibilities.**

**(a) Authorization of President.**

The President is authorized to reimburse any State for expenses incurred by such State in carrying out any responsibilities delegated to such State by the President under the provisions of this chapter.

**(b) Source of reimbursement.**

Such reimbursements may be paid from any funds appropriated for the purpose of carrying out responsibilities under this chapter, unless any appropriation Act specifically provides to the contrary.

**(c) Report to Congress by President; contents.**

Not later than June 1, 1976, the President shall submit a report to the Congress analyzing and detailing the amount and nature of any reimbursements made to any State for expenses described in subsection (a) of this section incurred prior to such date and specifically recommending whether authorizations of additional funds for direct grants to States are necessary or appropriate for the continued operation of the reimbursement provisions authorized by this section. (Pub. L. 93–159, § 19, as added Pub. L. 94–163, title IV, § 462, Dec. 22, 1975, 89 Stat. 955.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94–163, set out as a note under section 753 of this title.

## Chapter 16B.—FEDERAL ENERGY ADMINISTRATION [NEW]

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(g) Contract authority.
(h) Other necessary activities.
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This chapter is referred to in section 793 of this title; title 42 sections 6273, 6274.

## § 761. Congressional declaration of purpose.

(a) The Congress hereby declares that the general welfare and the common defense and security require positive and effective action to conserve scarce energy supplies, to insure fair and efficient distribution of, and the maintenance of fair and reasonable consumer prices for, such supplies, to promote the expansion of readily usable energy sources, and to assist in developing policies and plans to meet the energy needs of the Nation.

(b) The Congress finds that to help achieve these objectives, and to assure a coordinated and effective approach to overcoming energy shortages, it is necessary to reorganize certain agencies and functions of the executive branch and to establish a Federal Energy Administration.

(c) The sole purpose of this chapter is to create an administration in the executive branch, called the Federal Energy Administration, to vest in the Administration certain functions as provided in this chapter, and to transfer to such Administration certain executive branch functions authorized by other laws, where such transfer is necessary on an interim basis to deal with the Nation's energy shortages. (Pub. L. 93–275, § 2, May 7, 1974, 88 Stat. 97.)

EFFECTIVE AND TERMINATION DATES

Section 30 of Pub. L. 93–275 provided that: "This Act [this chapter] shall become effective sixty days after the date of enactment [May 7, 1974] or sooner if the President publishes notice in the Federal Register. This Act [this chapter] shall terminate June 30, 1976."

SHORT TITLE

Section 1 of Pub. L. 93–275 provided that: "This Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Federal Energy Administration Act of 1974'."

SEPARABILITY OF PROVISIONS

Section 27 of Pub. L. 93–275 provided that: "If any provision of this Act [this chapter], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act [this chapter], and the application of such provision to other persons or circumstances, shall not be affected thereby."

AUTHORIZATION OF APPROPRIATIONS

Section 29 of Pub. L. 93–275 provided that: "There are hereby authorized to be appropriated to the Administrator, to remain available until expended, $75,000,000 for fiscal year 1974, and $200,000,000 annually for each of fiscal years 1975 and 1976 to carry out the purposes of this Act [this chapter]."

EX. ORD. NO. 11790. EFFECTUATION OF CHAPTER

Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, provided:

Under and by virtue of the authority vested in me by the Federal Energy Administration Act of 1974 (Public Law 93–275) [this chapter], the Emergency Petroleum Allocation Act of 1973 (Public Law 93–159; 87 Stat. 627) [section 751 et seq. of this title], the Economic Stabilization Act of 1970, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. Pursuant to the authority vested in me by section 30 of the Federal Energy Administration Act of 1974 [set out as a note under this section], notice is hereby given that that act shall be effective as of June 27, 1974.

SEC. 2. (a) There is hereby delegated to the Administrator of the Federal Energy Administration (hereinafter referred to as the "Administrator"), all authority vested in the President by the Emergency Petroleum Allocation Act of 1973 [section 751 et seq. of this title].

(b) The Administrator shall submit to the Congress the reports required by section 4(c)(2) of the Emergency Petroleum Allocation Act of 1973 [section 753(c)(2) of this title].

SEC. 3. (a) There is hereby delegated to the Administrator the authority vested in the President by section 203 (a)(3) of the Economic Stabilization Act of 1970, as amended, to the extent such authority remains available under the provisions of section 218 of that act.

(b) The authority under the Economic Stabilization Act of 1970, as amended, that was delegated to the Administrator of the Federal Energy Office by the Chairman of the Cost of Living Council pursuant to section 4(b) of Executive Order No. 11748 of December 4, 1973, [set out as a note under section 754 of this title], is hereby transferred to the Administrator to the extent such authority remains available under the provisions of section 218 of that act.

SEC. 4. Notwithstanding the provisions of Executive Order No. 10480, as amended [set out as a note under section 2153 of Title 50, Appendix, War and National Defense], the Administrator is authorized to exercise the authority vested in the President by the Defense Production Act of 1950, as amended [section 2061 et seq. of Title 50, Appendix, War and National Defense], except section 708 thereof [section 2158 of Title 50, Appendix, War and National Defense], as it relates to the production, conservation, use, control, distribution, and allocation of energy, without approval, ratification, or other action of the President or any other official of the executive branch of the Government.

SEC. 5. (a) The Federal Energy Office established by Executive Order No. 11748 is hereby abolished, and that Executive order is hereby revoked.

(b) The authority vested in the Administrator of the Federal Energy Office to appoint a Deputy Administrator of that Office and to compensate that officer at the rate prescribed for officers and positions at level III of the Executive Schedule (5 U.S.C. 5314) is hereby revoked.

(c) All orders, regulations, circulars, or other directives issued and all other actions taken pursuant to any authority delegated or transferred to the Administrator by this order prior to and in effect on the date of this order are hereby confirmed and ratified, and shall remain in full force and effect, as if issued under this order, unless or until altered, amended, or revoked by the Administrator or by such competent authority as he may specify.

(d) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions of the Administrator of the Federal Energy Office, as Administrator of that Office or as Chairman of the Oil Policy Committee, are hereby transferred to the Administrator.

SEC. 6. All authority delegated or transferred to the Administrator by this order may be further delegated, in whole or in part, by the Administrator to any other office or any department or agency of the United States, or, if authorized by law, to any State or officer thereof.

SEC. 7. (a) Proclamation No. 3279, as amended [set out as a note under section 1862 of Title 19] is hereby amended by striking "Secretary of the Interior" and "Secretary" wherever it appears in that Proclamation and inserting in lieu thereof "Administrator of the Federal Energy Administration."

(b) The Appeals Board established by the Secretary of the Interior pursuant to section 5(a) of Proclamation No. 3279, as amended [set out as a note under section 1862 of Title 19] is hereby continued until such time as the Administrator shall otherwise direct. The Administrator, at his pleasure, may designate a representative of the Federal Energy Administration to be a member of the Appeals Board in place of the representative of the Department of the Interior specified in the last sentence of section 5(a) of that proclamation.

(c) The Oil Policy Committee is hereby abolished and section 7, 8, and 9 of Proclamation No. 3279, as amended [set out as a note under section 1862 of Title 19], are hereby revoked. The functions of the Chairman of the Oil Policy Committee are hereby transferred to the Administrator.

(d) Section 10 of Proclamation No. 3279, as amended [set out as a note under section 1862 of Title 19], is hereby amended by inserting after "Cost of Living Council" the following "or the Federal Energy Administration, as the case may be,".

(e) Section 2 of Executive Order No. 11775 of March 26, 1974, is hereby revoked.

SEC. 8. Except as provided in section 5(d), so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available, in connection with the functions transferred to the Administrator by this order or by the Federal Energy Administration Act of 1974 [this chapter] as the Director of the Office of Management and Budget shall determine shall be transferred at such time or times as the Director shall direct for use in connection with the functions so transferred.

SEC. 9. Nothing in this order shall be deemed to affect rights to reemployment under the provisions of section 5(a)(1)(B) of the Emergency Petroleum Allocation Act of 1973 [section 754(a)(1)(B) of this title], or section 212(g) of the Economic Stabilization Act of 1970, as amended.

SEC. 10. The provisions of sections 2 through 9 of this order shall be effective as of June 27, 1974, the effective date of the Federal Energy Administration Act of 1974 [this chapter] specified in section 1 of this order.

RICHARD NIXON.

## § 762. Establishment.

There is hereby established an independent agency in the executive branch to be known as the Federal Energy Administration (hereinafter in this chapter referred to as the "Administration"). (Pub. L. 93–275, § 3, May 7, 1974, 88 Stat. 97.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

## § 763. Officers.

**(a) Administrator; appointment and compensation; supervision and direction of Administration.**

There shall be at the head of the Administration an Administrator (hereinafter in this chapter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall receive compensation at the rate prescribed for offices and positions at level II of the Executive Schedule (section 5313 of Title 5). The Administration shall be administered under the supervision and direction of the Administrator.

**(b) Functions of Administrator; delegation of functions.**

(1) The functions and powers of the Administration shall be vested in and exercised by the Administrator.

(2) The Administrator may, from time to time and to the extent permitted by law, consistent with the purposes of this chapter delegate such of his functions as he deems appropriate.

**(c) Deputy Administrators; number; appointment and compensation.**

There shall be in the Administration two Deputy Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level III of the Executive Schedule (section 5314 of Title 5).

**(d) Assistant Administrators; number; appointment and compensation.**

There are authorized to be in the Administration six Assistant Administrators, who shall be appointed

by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level IV of the Executive Schedule (section 5315 of Title 5).

**(e) General Counsel; appointment and compensation.**

There shall be in the Administration a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level IV of the Executive Schedule (section 5315 of Title 5).

**(f) Additional officers; number; appointment and compensation; certain program assignments; competitive service provisions inapplicable.**

(1) There are authorized to be in the Administration not more than nine additional officers who shall be appointed by the Administrator and shall receive compensation at the rate prescribed for offices and positions at level V of the Executive Schedule (section 5316 of Title 5).

(2) If any person, other than an officer within subsections (c), (d), or (e) of this section, is to be assigned principal responsibility for any program that shall be instituted in the Administration for either (i) allocation, (ii) pricing, (iii) rationing (if effected), or (iv) Federal and State coordination, he shall be one of the officers authorized by paragraph (1) of this subsection except that he shall be appointed by the President by and with the advice and consent of the Senate.

(3) Appointments to the positions described in this subsection may be made without regard to the provisions of Title 5 governing appointments in the competitive service.

**(g) Functions of officers.**

Subject to subsection (f) of this section, officers appointed pursuant to this section shall perform such functions as the Administrator shall specify from time to time.

**(h) Order of succession.**

The Administrator shall designate the order in which the Deputy Administrators and other officials shall act for and perform the functions of the Administrator during his absence or disability or in the event of a vacancy in his office.

**(i) Conflict of interest; report to Congress; publication in Federal Register; other laws applicable.**

(1) For the purposes of this chapter, section 208(b) of Title 18, relating to conflicts of interest, can be invoked and implemented only by the Administrator personally. Such subsection shall not be invoked as to any person unless and until—

(A) the Congress has received, ten days prior thereto, a written report containing notice of the Administrator's intention so to invoke such subsection, a detailed statement of the subject matter concerning which a conflict exists; and in the case of an exemption set forth in clause (1) of such subsection, the nature of an officer's or employee's financial interest; or in the case of an exemption set forth in clause (2) of such subsection, the name and statement of financial interest of each person who will come within such exemption; and

(B) such written report is published in the Federal Register.

(2) Nothing contained in this subsection shall affect in any way the applicability or operation of other laws relating to officers and employees of the United States Government.

**(j) Dual employment.**

No individual holding any of the positions described in subsections (a), (c), (d), and (e) of this section may also hold any other position in the executive branch during the same period. (Pub. L. 93–275, § 4, May 7, 1974, 88 Stat. 97.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 764. Specific functions and purposes.**

(a) Subject to the provisions and procedures set forth in this chapter, the Administrator shall be responsible for such actions as are taken to assure that adequate provision is made to meet the energy needs of the Nation. To that end, he shall make such plans and direct and conduct such programs related to the production, conservation, use, control, distribution, rationing, and allocation of all forms of energy as are appropriate in connection with only those authorities or functions—

(1) specifically transferred to or vested in him by or pursuant to this chapter;

(2) delegated to him by the President pursuant to specific authority vested in the President by law; and

(3) otherwise specifically vested in the Administrator by the Congress.

(b) To the extent authorized by subsection (a) of this section, the Administrator shall—

(1) advise the President and the Congress with respect to the establishment of a comprehensive national energy policy in relation to the energy matters for which the Administration has responsibility, and, in coordination with the Secretary of State, the integration of domestic and foreign policies relating to energy resource management;

(2) assess the adequacy of energy resources to meet demands in the immediate and longer range future for all sectors of the economy and for the general public;

(3) develop effective arrangements for the participation of State and local governments in the resolution of energy problems;

(4) develop plans and programs for dealing with energy production shortages;

(5) promote stability in energy prices to the consumer, promote free and open competition in all aspects of the energy field, prevent unreasonable profits within the various segments of the energy industry, and promote free enterprise;

(6) assure that energy programs are designed and implemented in a fair and efficient manner so as to minimize hardship and inequity while assuring that the priority needs of the Nation are met;

(7) develop and oversee the implementation of equitable voluntary and mandatory energy conservation programs and promote efficiencies in the use of energy resources;

(8) develop and recommend policies on the import and export of energy resources;

(9) collect, evaluate, assemble, and analyze energy information on reserves, production, demand, and related economic data;

(10) work with business, labor, consumer and other interests and obtain their cooperation;

(11) in administering any pricing authority, provide by rule, for equitable allocation of all component costs of producing propane gas. Such rules may require that (a) only those costs directly related to the production of propane may be allocated by any producer to such gas for purposes of establishing any price for propane, and (b) prices for propane shall be based on the prices for propane in effect on May 15, 1973. The Administrator shall not allow costs attributable to changes in ownership and movement of propane gas where, in the opinion of the Administrator, such changes in ownership and movement occur primarily for the purpose of establishing a higher price; and

(12) perform such other functions as may be prescribed by law.

(Pub. L. 93–275, § 5, May 7, 1974, 88 Stat. 98.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 765. Transfer of functions.**

(a) There are hereby transferred to and vested in the Administrator all functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department—

(1) as relate to or are utilized by the Office of Petroleum Allocation;

(2) as relate to or are utilized by the Office of Energy Conservation;

(3) as relate to or are utilized by the Office of Energy Data and Analysis; and

(4) as relate to or are utilized by the Office of Oil and Gas.

(b) There are hereby transferred to and vested in the Administrator all functions of the Chairman of the Cost of Living Council, the Executive Director of the Cost of Living Council, and the Cost of Living Council, and officers and components thereof, as relate to or are utilized by the Energy Division of the Cost of Living Council. (Pub. L. 93–275, § 6, May 7, 1974, 88 Stat. 100.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 766. Administrative provisions.**

**(a) Officers and employees; appointment, employment, and compensation; authority and duties; positions in GS–16, 17, and 18; classification standards and procedures applicable; duration of authority; competitive service provisions partly inapplicable.**

(1) The Administrator may appoint, employ, and fix the compensation of such officers and employees, including attorneys, as are necessary to perform the functions vested in him, and prescribe their authority and duties. In addition to the number of positions which may be placed in GS–16, 17, and 18 under existing law, not to exceed 91 positions may be placed in GS–16, 17, and 18 to carry out the functions under this chapter: *Provided,* That the total number of positions within the Administration in GS–16, 17, 18 shall not exceed 105: *And provided further,* That, except as provided in paragraph (2) of this subsection, the authority under this subsection shall be subject to the standards and procedures prescribed under Chapter 51 of Title 5, and shall continue only for the duration of the exercise of functions under this chapter.

(2) Twenty-five of the GS–16, 17, and 18 positions authorized by paragraph (1) of this subsection may be filled without regard to the provisions of Title 5 governing appointments in the competitive service.

**(b) Experts and consultants; employment and compensation.**

The Administrator may employ experts, expert witnesses, and consultants in accordance with section 3109 of Title 5, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS–18 under section 5332 of Title 5 for persons in Government service employed intermittently.

**(c) Rules, regulations, and procedures; Cost of Living Council, notification; quality of environment, publication of comments; emergency preclusion of review by Cost of Living Council.**

The Administrator may promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him: *Provided,* That:

(1) The Administrator shall, before promulgating proposed rules, regulations, or policies relating to the cost or price of energy, transmit notice of such proposed action to the Cost of Living Council and provide a period, which shall not be less than five days from the receipt of such notice, for the Cost of Living Council to approve or disapprove such proposed action. If during the period provided, the Cost of Living Council—

(A) approves such proposed action, it may take effect;

(B) disapproves such proposed action, it shall not make effect; or

(C) fails to either approve or disapprove such proposed action, it may take effect in the same manner as if the Cost of Living Council had given its approval.

(2) The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provided a period of not less than five days from receipt of notice of the proposed action during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published along with public notice of the proposed action.

The review required by paragraphs (1) and (2) of this subsection may be waived for a period of fourteen days if there is an emergency situation which,

in the judgment of the Administrator, requires immediate action.

**(d) Interagency cooperation; reimbursement provisions.**

The Administrator may utilize, with their consent, the services, personnel, equipment, and facilities of Federal, State, regional, and local public agencies and instrumentalities, with or without reimbursement therefor, and may transfer funds made available pursuant to this chapter, to Federal, State, regional, and local public agencies and instrumentalities, as reimbursement for utilization of such services, personnel, equipment, and facilities.

**(e) Seal; judicial notice.**

The Administrator shall cause a seal of office to be made for the Administration of such design as he shall approve, and judicial notice shall be taken of such seal.

**(f) Gifts; acceptance.**

The Administrator may accept unconditional gifts or donations of money or property, real, personal, or mixed, tangible or intangible.

**(g) Contract authority.**

The Administrator may enter into and perform contracts, leases, cooperative agreements, or other similar transactions with any public agency or instrumentality or with any person, firm, association, corporation, or institution.

**(h) Other necessary activities.**

The Administrator may perform such other activities as may be necessary for the effective fulfillment of his administrative duties and functions.

**(i) Rules, regulations, or orders; publication in Federal Register; comments; waiver of comment period; public notice, publication; views, oral presentation; transcript; adjustments; procedures respecting application and operation; administrative and judicial review; hearings: requests for action; public information; written opinions; jurisdiction of courts of appeals and district courts; defenses in any proceeding; removal of Federal questions; concurrent jurisdiction; procedures for State or local government agencies.**

(1)(A) Subject to paragraphs (B), (C), and (D) of this subsection, the provisions of subchapter II of chapter 5 of Title 5 shall apply to any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of Title 5, issued pursuant to this chapter, including any such rule, regulation, or order of a State or local government agency, or officer thereof, issued pursuant to authority delegated by the Administrator.

(B) Notice of any proposed rule, regulation, or order described in paragraph (A) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In addition, public notice of all rules, regulations, or orders described in paragraph (A) which are promulgated by officers of a State or local government agency shall to the maximum extent practicable be achieved by publication of such rules, regulations, or orders in a sufficient number of newspapers of statewide circulation calculated to receive widest possible notice.

(C) In addition to the requirements of paragraph (B), if any rule, regulation, or order described in paragraph (A) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than forty-five days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.

(D) Any officer or agency authorized to issue the rules, regulations, or orders described in paragraph (A) shall provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rules, regulations, and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the officer or agency and may obtain judicial review in accordance with paragraph (2) of this subsection when such denial becomes final. The officer or agency shall, by rule, establish appropriate procedures, including a hearing where deemed advisable by the officer or agency, for considering such requests for action under this paragraph.

(E) In addition to the requirements of section 552 of Title 5, any agency authorized to issue the rules, regulations, or orders described in paragraph (A) shall make available to the public all internal rules and guidelines which may form the basis, in whole or in part, for any such rule, regulation, or order with such modifications as are necessary to insure confidentiality protected under such section 552. Such agency shall, upon written request of a petitioner filed after any grant or denial of a request for exception or exemption from rules or orders, furnish the petitioner with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial. Such opinions shall be made available to the petitioner and the public within thirty days of such request, with such modifications as are necessary to insure confidentiality of information protected under such section 552.

(2)(A) Judicial review of administrative rulemaking of general and national applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule, regulation, or order, and judicial review of administrative rulemaking of gen-

eral, but less than national, applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule, regulation, or order, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule, regulation, or order is to have effect.

(B) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this chapter, or under rules, regulations, or orders issued thereunder, except any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this chapter: *Provided,* That nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this chapter or the validity of action taken by any agency under this chapter). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this chapter or the validity of agency action under this chapter, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of Title 28. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (1) any appropriate State court, or (2) without regard to the amount in controversy, the district courts of the United States.

(3) The Administrator may by rule prescribe procedures for State or local government agencies authorized by the Administrator to carry out functions under this chapter. Such procedures shall apply to such agencies in lieu of paragraph (1) of this subsection, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) at least ten days before taking the action.

**(j) Information for independent regulatory agencies.**

The Administration, in connection with the exercise of the authority under this chapter, shall be considered an independent Federal regulatory agency for the purposes of sections 3502 and 3512 of Title 44 (Pub. L. 93–275, § 7, May 7, 1974, 88 Stat. 100.)

REFERENCES IN TEXT

Emergency Petroleum Allocation Act of 1973, referred to in subsec. (i)(2)(A), is classified to chapter 16A (§ 751 et seq.) of this title.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 767, 771, 780 of this title.

**§ 767. Transitional and savings provisions.**

**(a) Continuance of effective status.**

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, by any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter, and

(2) which are in effect at the time this chapter takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, other authorized officials, a court of competent jurisdiction, or by operation of law.

**(b) Pending proceedings; orders, appeals, payments.**

This chapter shall not affect any proceeding pending, at the time this chapter takes effect, before any department or agency (or component thereof) regarding functions which are transferred by this chapter; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals (except as provided in section 766(i)(2) of this title) shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions, and to the same extent, that such proceeding could have been discontinued if this chapter had not been enacted.

**(c) Commencement of suits before effective date.**

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to the date this chapter takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this chapter had not been enacted.

**(d) Litigation; abatement prohibition; Federal parties.**

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and,

in any litigation pending when this chapter takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

**(e) Substitution of parties.**

If, before the date on which this chapter takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Administrator, or any other official, then such suit shall be continued as if this chapter had not been enacted, with the Administrator, or other official as the case may be, substituted.

**(f) Judicial review; other requirements respecting notices, hearings, action upon record, and administrative review; conflicting provisions.**

Final orders and actions of any official or component in the performance of functions transferred by this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this chapter. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred or delegated by this chapter shall apply to the performance of those functions by the Administrator, or any officer or component of the Administration. In the event of any inconsistency between the provisions of this subsection and section 766 of this title, the provisions of section 766 of this title shall govern.

**(g) References in other laws deemed references to transferee offices or officers.**

With respect to any function transferred by this chapter and performed after the effective date of this chapter, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, Administrator, or other office or officers in which this chapter vests such functions.

**(h) Presidential functions, authorities, and delegations unaffected.**

Nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this chapter; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegations of functions.

**(i) References to other provisions deemed references to such provisions as amended or supplemented.**

Any reference in this chapter to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented. (Pub. L. 93–275, § 8, May 7, 1974, 88 Stat. 103.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in the text, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 768. Incidental transfers.**

The Director of the Office of Management and Budget is authorized and directed to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with functions which are transferred by or which revert under this chapter, as the Director deems necessary and appropriate to accomplish the intent and purpose of this chapter. (Pub. L. 93–275, § 9, May 7, 1974, 88 Stat. 105.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 769. Definitions.**

As used in this chapter—

(1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to "perform" or "performance", when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

(Pub. L. 93–275, § 10, May 7, 1974, 88 Stat. 105.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 770. Appointments.**

**(a) Interim funds.**

Funds available to any department or agency (or any official or component thereof), and lawfully authorized for any of the specific functions which are transferred to the Administrator by this chapter, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this chapter until such times as funds for that purpose are otherwise available.

**(b) Interim appointments.**

In the event that any officer required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this chapter, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this chapter, or any officer who was performing essentially the same functions immediately prior to the effective date of this chapter to act in such office until the office is filled as provided in this chapter: *Provided*, That any officer acting pursuant to the provisions of this subsection may act no longer than a period of thirty days unless during such period

his appointment as such an officer is submitted to the Senate for its advice and consent.

**(c) Nontemporary personnel; transferee rights for one year.**

Transfer of nontemporary personnel pursuant to this chapter shall not cause any such employee to be separated or reduced in grade or compensation, except for cause, for one year after such transfer.

**(d) Compensation of new position at not less than provided for in Executive Schedule for previous position in cases of appointees without break in service.**

Any person who, on the effective date of this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of Title 5, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment, shall continue to be compensated in his new position at not less than the rate provided for his previous position. (Pub. L. 93–275, § 11, May 7, 1974, 88 Stat. 105.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in the text, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 771. Comptroller General, powers and duties.**

**(a) Scope of activities; monitoring activity; data to Comptroller General from Administration; reports and recommendations to Congress.**

For the duration of this chapter, the Comptroller General of the United States shall monitor and evaluate the operations of the Administration including its reporting activities. The Comptroller General shall (1) conduct studies of existing statutes and regulations governing the Administration's programs; (2) review the policies and practices of the Administration; (3) review and evaluate the procedures followed by the Administrator in gathering, analyzing, and interpreting energy statistics, data, and information related to the management and conservation of energy, including but not limited to data related to energy costs, supply, demand, industry structure, and environmental impacts; and (4) evaluate particular projects or programs. The Comptroller General shall have access to such data within the possession or control of the Administration from any public or private source whatever, notwithstanding the provisions of any other law, as are necessary to carry out his responsibilities under this chapter and shall report to the Congress at such times as he deems appropriate with respect to the Administration's programs, including his recommendations for modifications in existing laws, regulations, procedures, and practices.

**(b) Access to material and written energy information from owners or operators of facilities or business premises engaged in energy matters; scope of information.**

The Comptroller General or any of his authorized representatives in carrying out his responsibilities under this section may request access to any books, documents, papers, statistics, data, records, and information of any person owning or operating facilities or business premises who is engaged in any phase of energy supply or major energy consumption, where such material relates to the purposes of this chapter, including but not limited to energy costs, demand, supply, industry structure, and environmental impacts. The Comptroller General may request such person to submit in writing such energy information as the Comptroller General may prescribe.

**(c) Access to material and information from recipients of Federal funds or assistance under Federal transactions.**

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of any recipients of Federal funds or assistance under contracts, leases, cooperative agreements, or other transactions entered into pursuant to subsection (d) or (g) of section 766 of this title which in the opinion of the Comptroller General may be related or pertinent to such contracts, leases, cooperative agreements, or similar transactions.

**(d) Subpenas; committee resolution; issuance; production of evidence.**

To assist in carrying out his responsibilities under this section, the Comptroller General may, with the concurrence of a duly established committee of Congress having legislative or investigative jurisdiction over the subject matter and upon the adoption of a resolution by such a committee which sets forth specifically the scope and necessity therefor, and the specific identity of those persons from whom information is sought, sign and issue subpenas requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section.

**(e) Enforcement of subpenas; jurisdiction; order for production of evidence; contempt.**

In case of disobedience to a subpena issued under subsection (d) of this section, the Comptroller General may invoke the aid of any district court of the United States in requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpena issued by the Comptroller General, issue an order requiring such person to produce the books, documents, papers, statistics, data, records, or information; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

**(f) Availability to public of reports submitted to Congress; prohibited disclosures: confidential information and trade secrets; preservation of confidentiality in disclosures to Government.**

Reports submitted by the Comptroller General to the Congress pursuant to this section shall be available to the public at reasonable cost and upon identifiable request. The Comptroller General may not disclose to the public any information which concerns or relates to a trade secret or other matter

referred to in section 1905 of Title 18, except that such information shall be disclosed by the Comptroller General or the Administrator, in a manner designed to preserve its confidentiality—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) to committees of congress upon request; and

(3) to a court in any judicial proceeding under court order.

(Pub. L. 93–275, § 12, May 7, 1974, 88 Stat. 106.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 772. Administrator's information-gathering power.**

**(a) Comprehensive and particular energy information; categorical groupings; monitoring activity and policy guidance.**

The Administrator shall collect, assemble, evaluate, and analyze energy information by categorical groupings, established by the Administrator, of sufficient comprehensiveness and particularity to permit fully informed monitoring and policy guidance with respect to the exercise of his functions under this chapter.

**(b) Information and data to Administrator from owners or operators of facilities or business premises engaged in energy matters.**

All persons owning or operating facilities or business premises who are engaged in any phase of energy supply or major energy consumption shall make available to the Administrator such information and periodic reports, records, documents, and other data, relating to the purposes of this chapter, including full identification of all data and projections as to source, time, and methodology of development, as the Administrator may prescribe by regulation or order as necessary or appropriate for the proper exercise of functions under this chapter.

**(c) General or special orders for filing reports or answers in writing to specific questions, surveys, or questionnaires; oath or otherwise; filing period.**

The Administrator may require, by general or special orders, any person engaged in any phase of energy supply or major energy consumption to file with the Administrator in such form as he may prescribe, reports or answers in writing to such specific questions, surveys, or questionnaires as may be necessary to enable the Administrator to carry out his functions under this chapter. Such reports and answers shall be made under oath, or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as he may prescribe.

**(d) Investigations, physical inspections, inventories and samples, copies, and interrogations.**

The Administrator, to verify the accuracy of information he has received or otherwise to obtain information necessary to perform his functions under this chapter, is authorized to conduct investigations, and in connection therewith, to conduct, at reasonable times and in a reasonable manner, physical inspections at energy facilities and business premises, to inventory and sample any stock of fuels or energy sources therein, to inspect and copy records, reports, and documents from which energy information has been or is being compiled, and to question such persons as he may deem necessary.

**(e) Subpenas; attendance and testimony of witnesses; production of evidence; enforcement; judicial orders; contempt.**

(1) The Administrator, or any of his duly authorized agents, shall have the power to require by subpena the attendance and testimony of witnesses, and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Administrator is authorized to obtain pursuant to this section.

(2) Any appropriate United States district court may, in case of contumacy or refusal to obey a subpena issued pursuant to this section, issue an order requiring the party to whom such subpena is directed to appear before the Administration and to give testimony touching on the matter in question, or to produce any matter described in paragraph (1) of this subsection, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**(f) Federal information concerning energy resources on Federal lands; scope of information.**

The Administrator shall collect from departments, agencies and instrumentalities of the executive branch of the Government (including independent agencies), and each such department, agency, and instrumentality is authorized and directed to furnish, upon his request, information concerning energy resources on lands owned by the Government of the United States. Such information shall include, but not be limited to, quantities of reserves, current or proposed leasing agreements, environmental considerations, and economic impact analyses. (Pub. L. 93–275, § 13, May 7, 1974, 88 Stat. 107.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 774 of this title.

**§ 773. Public disclosure of information.**

**(a) Analyses, data, information, reports, and summaries; objectives of disclosures.**

The Administrator shall make public, on a continuing basis, any statistical and economic analyses, data, information, and whatever reports and summaries are necessary to keep the public fully and currently informed as to the nature, extent, and projected duration of shortages of energy supplies, the impact of such shortages, and the steps being taken to minimize such impacts.

**(b) Freedom of Information Act applicable; disclosure of confidential information or trade secrets; disclosure of matter included in public annual reports to Securities and Exchange Commission and matter excepted from such disclosure.**

Subject to the provisions of this chapter, section 552 of Title 5 shall apply to public disclosure of information by the Administrator: *Provided*, That not-

withstanding said section, the provisions of section 1905 of Title 18, or any other provision of law, (1) all matters reported to, or otherwise obtained by, any person exercising authority under this chapter containing trade secrets or other matter referred to in section 1905 of Title 18, may be disclosed to other persons authorized to perform functions under this chapter solely to carry out the purposes of the chapter, or when relevant in any proceeding under this chapter, and (2) the Administrator shall disclose to the public, at a reasonable cost, and upon a request which reasonably describes the matter sought, any matter of the type which could not be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 78m or 78o(d) of this title by a business enterprise exclusively engaged in the manufacture or sale of a single product, unless such matter concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of a business enterprise.

**(c) Guidelines and procedures for handling information pertaining to individuals; access of individuals to such personal information.**

To protect and assure privacy of individuals and confidentiality of personal information, the Administrator is directed to establish guidelines and procedures for handling any information which the Administration obtains pertaining to individuals. He shall provide, to the extent practicable, in such guidelines and procedures a method for allowing any such individual to gain access to such information pertaining to himself. (Pub. L. 93–275, § 14, May 7, 1974, 88 Stat. 108.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6274.

**§ 774. Reports and recommendations.**

**(a) Presidential transmittal to Congress.**

Six months before the expiration of this chapter, the President shall transmit to Congress a full report together with his recommendations for—

(1) disposition of the functions of the Administration upon its termination;

(2) continuation of the Administration with its present functions; or

(3) reorganization of the Administration; and

(4) organization of the Federal Government for the management of energy and natural resources policies and programs.

**(b) Administrator's initial submittal to President and Congress.**

Not later than one year after the effective date of this chapter, the Administrator shall submit a report to the President and Congress which will provide a complete and independent analysis of actual oil and gas reserves and resources in the United States and its Outer Continental Shelf, as well as of the existing productive capacity and the extent to which such capacity could be increased for crude oil and each major petroleum product each year for the next ten years through full utilization of available technology and capacity. The report shall also contain the Administration's recommendations for improving the utilization and effectiveness of Federal energy data and its manner of collection. The data collection and analysis portion of this report shall be prepared by the Federal Trade Commission for the Administration. Unless specifically prohibited by law, all Federal agencies shall make available estimates, statistics, data and other information in their files which, in the judgment of the Commission or Administration, are necessary for the purposes of this subsection.

**(c) Administrator's annual report to Congress; contents.**

The Administrator shall prepare and submit directly to the Congress and the President every year after May 7, 1974, a report which shall include—

(1) a review and analysis of the major actions taken by the Administrator;

(2) an analysis of the impact these actions have had on the Nation's civilian requirements for energy supplies for materials and commodities;

(3) a projection of the energy supply for the midterm and long term for each of the major types of fuel and the potential size and impact of any anticipated shortages, including recommendations for measures to—

(A) minimize deficiencies of energy supplies in relation to needs;

(B) maintain the health and safety of citizens;

(C) maintain production and employment at the highest feasible level;

(D) equitably share the burden of shortages among individuals and business firms; and

(E) minimize any distortion of voluntary choices of individuals and firms;

(4) a summary listing of all recipients of funds and the amount thereof within the preceding period; and

(5) a summary listing of information-gathering activities conducted under section 772 of this title.

**(d) Citizen fuel use; summer guidelines.**

Not later than thirty days after the effective date of this chapter, the Administrator shall issue preliminary summer guidelines for citizen fuel use.

**(e) Administrator's interim reports to Congress.**

The Administrator shall provide interim reports to the Congress from time to time and when requested by committees of Congress. (Pub. L. 93–275, § 15, May 7, 1974, 88 Stat. 108.)

REFERENCES IN TEXT

For expiration of this chapter referred to in subsec. (a), and for effective date of this chapter, referred to in subsecs.(b) and (d), see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 5819, 6397.

**§ 775. Sex discrimination; enforcement; other legal remedies.**

No individual shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or remove any other legal remedies available to any individual alleging discrimination. (Pub. L. 93–275, § 16, May 7, 1974, 88 Stat. 109.)

REFERENCES IN TEXT

Title VI of the Civil Rights Act of 1964, referred to in the text, is classified to section 2000d et seq. of Title 42, The Public Health and Welfare.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 776. Advisory committees.**

**(a) Representation of points of view and functions, government, and regulatory utility commissions.**

Whenever the Administrator shall establish or utilize any board, task force, commission, committee, or similar group, not composed entirely of full-time Government employees, to advise with respect to, or to formulate or carry out, any agreement or plan of action affecting any industry or segment thereof, the Administrator shall endeavor to insure that each such group is reasonably representative of the various points of view and functions of the industry and users affected, including those of residential, commercial, and industrial consumers, and shall include, where appropriate, representation from both State and local governments, and from representatives of State regulatory utility commissions, selected after consultation with the respective national associations.

**(b) Public meetings; participation of interested persons; closed meetings; determination, national security, reasons.**

Each meeting of such board, task force, commission, committee, or similar group, shall be open to the public, and interested persons shall be permitted to attend, appear before, and file statements with, such group, except that the Administrator may determine that such meeting shall be closed in the interest of national security. Such determination shall be in writing, shall contain a detailed explanation of reasons in justification of the determination, and shall be made available to the public.

**(c) Public inspection and copying of documents.**

All records, reports, transcripts, memoranda, and other documents, which were prepared for or by such group, shall be available for public inspection and copying at a single location in the offices of the Administration.

**(d) Federal Advisory Committee Act applicable.**

Advisory committees established or utilized pursuant to this Act shall be governed in full by the provisions of the Federal Advisory Committee Act, except as inconsistent with this section. (Pub. L. 93–275, § 17, May 7, 1974, 88 Stat. 110.)

REFERENCES IN TEXT

Federal Advisory Committee Act, referred to in subsec. (d), is set out in Appendix I to Title 5, Government Organization and Employees.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6273; title 50 App. section 2158a.

**§ 777. Economic analysis of proposed actions.**

**(a) Scope of analysis.**

In carrying out the provisions of this chapter, the Administrator shall, to the greatest extent practicable, insure that the potential economic impacts of proposed regulatory and other actions are evaluated and considered, including but not limited to an analysis of the effect of such actions on—

(1) the fiscal integrity of State and local governments;

(2) vital industrial sectors of the economy;

(3) employment, by industrial and trade sectors, as well as on a national, regional, State, and local basis;

(4) the economic vitality of regional, State, and local areas;

(5) the availability and price of consumer goods and services;

(6) the gross national product;

(7) low and middle income families as defined by the Bureau of Labor Statistics;

(8) competition in all sectors of industry; and

(9) small business.

**(b) Conservation measures.**

The Administrator shall develop analyses of the economic impact of various conservation measures on States or significant sectors thereof, considering the impact on both energy for fuel and energy as feed stock for industry.

**(c) Explicit analyses; interagency cooperation; other review and cause of action provisions.**

Such analyses shall, wherever possible, be made explicit, and to the extent possible, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analyses and all Federal agencies are authorized and directed to cooperate with the Administrator in preparing such analyses: *Provided*, That the Administrator's actions pursuant to this section shall not create any right of review or cause of action except as would otherwise exist under other provisions of law.

**(d) Monitoring economic impact of energy actions; report and recommendations to Congress.**

The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any energy actions taken by the Administrator, and shall provide the Congress with a report

every six months on the impact of the energy shortage and the Administrator's actions on employment and the economy. Such report shall contain recommendations as to whether additional Federal programs of employment and economic assistance should be put into effect to minimize the impact of the energy shortage and any actions taken.

**(e) Industrial or regional discrimination; equal bearing of costs and burdens of meeting energy shortages.**

The Administrator shall formulate and implement regulatory and other actions in a manner (1) which does not unduly discriminate against any industry or any region of the United States; and (2) designed to insure that, to the greatest extent possible, the costs and burdens of meeting energy shortages shall be borne equally by every sector and segment of the country and of the economy. (Pub. L. 93–275, § 18, May 7, 1974, 88 Stat. 110.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 778. Management oversight review; report to Administrator.**

The Administrator may, for a period not to exceed thirty days in any one calendar year, provide for the exercise or performance of a management oversight review with respect to the conduct of any Federal or State (with consent of the Governor) energy program conducted pursuant to this chapter. Such review may be conducted by contract or by any Federal department or agency. A written report shall be submited to the Administrator concerning the findings of the review. (Pub. L. 93–275, § 19, May 7, 1974, 88 Stat. 111.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set as a note under section 761 of this title.

**§ 779. Coordination with, and technical assistance to, State governments.**

**(a) Report to Congress and State governments: organization of Administration; report to the public, Congress and State governments: scope of nontechnical report; comments of State governments respecting rules, regulations, or policies and programs; energy shortages, status reports; information clearing house.**

The Administrator shall—

(1) coordinate Federal energy programs and policies with such programs and policies of State governments by providing—

(A) within sixty days of the effective date of this chapter, the Congress and State governments with a report on the manner in which he has organized the Administration based upon the functions delegated by the President or assigned to the Administrator by this chapter or under the authority of other Acts; and

(B) within one hundred and twenty days of the effective date of this chapter, the public, State governments, and all Members of the Congress with a report in nontechnical language which—

(i) describes the functions performed by the Administration;

(ii) sets forth in detail the organization of the Administration, the location of its offices (including regional, State, and local offices), the names and phone numbers of Administration officials, and other appropriate information concerning the operation of the Administration;

(iii) delineates the role that State, and Federal governments will or may perform in achieving the purposes of this chapter; and

(iv) provides the public with a clear understanding of their duties and obligations, rights, and responsibilities under any of the programs or functions of the Administration;

(2) before promulgating any rules, regulations, or policies, and before establishing any programs under the authority of this chapter, provide, where practicable, a reasonable period in which State governments may provide written comments if such rules, regulations, policies, or programs substantially affect the authority or responsibility of such State governments;

(3) provide, in accordance with the provisions of this chapter, upon request, to State governments all relevant information he possesses concerning the status and impact of energy shortages, the extent and location of available supplies and shortages of crude oil, petroleum products, natural gas, and coal, within the distribution area serving that particular State government; and

(4) provide for a central clearinghouse for Federal agencies and State governments seeking energy information and assistance from the Federal Government.

**(b) Technical assistance; task forces; conferences: expenses of participation; model legislation; uniform criteria, procedures, and forms for grant or contract applications for State government energy proposals.**

Pursuant to his responsibility under this section, the Administrator shall—

(1) provide technical assistance—including advice and consultation relating to State programs, and, where necessary, the use of task forces of public officials and private persons assigned to work with State governments—to assist State governments in dealing with energy problems and shortages and their impact and in the development of plans, programs, and policies to meet the problems and shortages so identified;

(2) convene conferences of State and Federal officials, and such other persons as the Administrator designates, to promote the purposes of this chapter, and the Administrator is authorized to pay reasonable expenses incurred in the participation of individuals in such conferences;

(3) draft and make available to State governments model legislation with respect to State energy programs and policies; and

(4) promote the promulgation of uniform criteria, procedures, and forms for grant or contract applications for energy proposals submitted by State governments.

(Pub. L. 93–275, § 20, May 7, 1974, 88 Stat. 111.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in the text, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 780. Office of Private Grievances and Redress.**

**(a) Establishment; director; statement of purpose.**

The Administrator shall establish and maintain an Office of Private Grievances and Redress, headed by a director, to receive and evaluate petitions filed in accordance with subsection (b) of this section, and to make recommendations to the Administrator for appropriate action.

**(b) Petition for special redress, relief, or other extraordinary assistance; nature of remedy.**

Any person, adversely affected by any order, rule, or regulation issued by the Administrator in carrying out the functions assigned to him under this chapter, may petition the Administrator for special redress, relief, or other extraordinary assistance, apart from, or in addition to, any right or privilege to seek redress of grievances provided in section 766 of this title.

**(c) Report and recommendations to Congress.**

The Administrator shall report quarterly to the Congress on the nature and number of the grievances which have been filed, and the action taken and relief provided, pursuant to this section; and he shall make recommendations to the Congress from time to time concerning legislative or administrative actions which may be taken to better assist persons adversely affected by the energy shortages and to distribute more equitably the burdens resulting from any measures adopted, or actions taken, by him. (Pub. L. 93–275, § 21, May 7, 1974, 88 Stat. 112.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 781. Comprehensive energy plan.**

**(a) Report to President and Congress; analytical justification; scope of analysis.**

Pursuant and subject to the provisions and procedures set forth in this chapter, the Administrator shall, within six months from May 7, 1974, develop and report to the Congress and the President a comprehensive plan designed to alleviate the energy shortage, for the time period covered by this chapter. Such plan shall be accompanied by full analytical justification for the actions proposed therein. Such analysis shall include, but not be limited to—

(1) estimates of the energy savings of each action and of the program as a whole;

(2) estimates of any windfall losses and gains to be experienced by corporations, industries, and citizens grouped by socioeconomic class;

(3) estimates of the impact on supplies and consumption of energy forms consequent to such price changes as are or may be proposed; and

(4) a description of alternative actions which the Administrator has considered together with a rationale in explanation of the rejection of any such alternatives in preference to the measures actually proposed.

**(b) Alterations; analytical justifications.**

The Administrator may, from time to time, modify or otherwise alter any such plan, except that, upon request of an appropriate committee of the Congress, the Administrator shall supply analytical justifications for any such alterations.

**(c) Monitoring activity.**

The Administrator shall be responsible for monitoring any such plans as are implemented with respect to their effectiveness in achieving the anticipated benefits. (Pub. L. 93–275, § 22, May 7, 1974, 88 Stat. 113.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 782. Petrochemical report to Congress.**

**(a) Scope of report.**

Within ninety days after he has entered upon the office of Administrator or has been designated by the President to act in such office, the Administrator, or acting Administrator, as the case may be, with the assistance of the Department of Commerce, the Cost of Living Council, and the United States Tariff Commission shall, by written report, inform the Congress as to the—

(1) effect of current petrochemical prices upon the current level of petrochemical exports, and export levels expected for 1975;

(2) effect of current and expected 1975 petrochemical export levels upon domestic petrochemical raw materials and products available to petrochemical producers, converters, and fabricators currently and in 1975;

(3) current contribution of petrochemical imports to domestic supplies and the expected contributions in 1975;

(4) anticipated economic effects of current and expected 1975 levels of domestic supplies of petrochemicals upon domestic producers, converters, and fabricators of petrochemical raw materials and products; and

(5) exact nature, extent, and sources of data and other information available to the Federal Government regarding the matters set forth in paragraphs (1) through (4) of this subsection, including the exact nature, extent, and sources of such data and information utilized in connection with the report required by this subsection.

**(b) Definition of "petrochemical."**

As used in this section, the term "petrochemical" includes organic chemicals, cyclic intermediates, plastics and resins, synthetic fibers, elastomers, organic dyes, organic pigments, detergents, surface active agents, carbon black and ammonia. (Pub. L. 93–275, § 23, May 7, 1974, 88 Stat. 113.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 783. Hydroelectric generating facilities; lists, transmittal to Congress; construction schedule and cost estimates for expedited construction program; prospective accomplishments from expedited completion of facilities; statement of appropriated but not obligated funds.**

Within ninety days of the effective date of this chapter, the Administrator of the Federal Energy Administration, in consultation with the Secretary of the Interior and the Secretary of the Army, shall—

(1) transmit to the Congress—

(A) a list of hydroelectric generating facilities and electric power transmission facilities which have been authorized for construction by the Congress and which are not yet completed, and

(B) a list of opportunities to increase the capacity of existing hydroelectric generating facilities, and

(2) provide, for each such facility which is listed—

(A) a construction schedule and cost estimates for an expedited construction program which would make the facility available for service at the earliest practicable date, and

(B) a statement of the accomplishments which could be provided by the expedited completion of each facility and a statement of any funds which have been appropriated but not yet obligated.

(Pub. L. 93–275, § 24, May 7, 1974, 88 Stat. 114.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in the text, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 784. Exports of coal and refined petroleum products.**

**(a) File concerning export transactions, sales, exchanges or shipments: establishment and maintenance; scope of information.**

The Administrator is authorized and directed to establish and maintain a file which shall contain information concerning every transaction, sale, exchange or shipment involving the export from the United States to a foreign nation of coal, crude oil, residual oil or any refined petroleum product. Information to be included in the file shall be current and shall include, but shall not be limited to, the name of the exporter (including the name or names of the holders of any beneficial interests), the volume and type of product involved in the export transaction, the manner of shipment and identification of the vessel or carrier, the destination, the name of the purchaser if a sale, exchange or other transaction is involved, and a statement of reasons justifying the export.

**(b) Information and report to committee of Congress or head of Federal agency from Administrator; exception: disclosure detrimental to national security.**

Upon request of any committee of Congress or the head of any Federal agency, the Administrator shall promptly provide any information maintained in the file and a report thereon to such committee, or agency head, except where the President finds such disclosure to be detrimental to national security.

**(c) Information to Administrator from Federal agency.**

Notwithstanding any other provision of law, any Federal agency which collects or has information relevant to the functions required by this section shall make such information available to the Administrator. (Pub. L. 93–275, § 25, May 7, 1974, 88 Stat. 114.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 785. Foreign ownership; comprehensive review; sources of information; report to Congress; monitoring activity.**

The Administrator shall conduct a comprehensive review of foreign ownership of, influence on, and control of domestic energy sources and supplies. Such review shall draw upon existing information, where available, and any independent investigation necessary by the Administration. The Administrator shall, on or before the expiration of the one hundred and eighty day period following the effective date of this chapter, report to the Congress in sufficient detail so as to apprise the Congress as to the extent and forms of such foreign ownership of, influence on, and control of domestic energy sources and supplies, and shall thereafter continue to monitor such ownership, influence and control. (Pub. L. 93–275, § 26, May 7, 1974, 88 Stat. 115.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in the text, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

**§ 786. Reversion.**

Upon the termination of this chapter, any functions or personnel transferred by this chapter shall revert to the department, agency, or office from which they were transferred. An officer or employee of the Federal Government who is appointed, without break in service of one or more workdays, to any position for carrying out functions under this chapter is entitled, upon separation from such position other than for cause, to reemployment in the position occupied at the time of appointment, or in a position of comparable grade and salary. (Pub. L. 93–275, § 28, May 7, 1974, 88 Stat. 115.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register,

and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

## Chapter 16C.—ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION [NEW]

Sec.
791. Congressional declaration of purpose.
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(b) Prerequisites to issuance or effectiveness of orders prohibiting use of natural gas or petroleum products as primary energy source.
(c) Construction and design of powerplants or other major fuel burning installations.
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794. Energy conservation study.
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796. Reporting of energy information.
(a) Authority of Federal Energy Administrator to request, acquire, and collect energy information; rules and regulations.
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797. Enforcement.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 1857c–5, 1857c–10, 6274.

### § 791. Congressional declaration of purpose.

The purposes of this chapter are (1) to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and (2) to provide requirements for reports respecting energy resources. (Pub. L. 93–319, § 1(b), June 22, 1974, 88 Stat. 246.)

REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 93–319 which, in addition to enacting this chapter, enacted sections 1857c–10 and 1857–6f and amended sections 1857b–1, 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, 1857f–6e, 1857h–5, and 1857*l* of Title 42, The Public Health and Welfare.

SHORT TITLE

Section 1(a) of Pub. L. 93–319 provided that Pub. L. 93–319 [which enacted this chapter and sections 1857c–10 and 1857f–6f of Title 42, The Public Health and Welfare, and amended sections 1857b–1, 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, 1857f–6e, 1857h–5, and 1857*l* of Title 42] may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

### § 792. Coal conversion and allocation.

**(a) Powerplant and fuel burning installations.**

The Federal Energy Administrator—

(1) shall, by order, prohibit any powerplant, and

(2) may, by order, prohibit any major fuel burning installation, other than a powerplant, from burning natural gas or petroleum products as its primary energy source, if the requirements of subsection (b) of this section are met and if (A) the Federal Energy Administrator determines such powerplant or installation on June 22, 1974, had, or thereafter acquires or is designed with, the capability and necessary plant equipment to burn coal, or (B) such powerplant or installation is required to meet a design or construction requirement under subsection (c) of this section.

**(b) Prerequisites to issuance or effectiveness of orders prohibiting use of natural gas or petroleum products as primary energy source.**

The requirements referred to in subsection (a) of this section are as follows:

(1) An order under subsection (a) of this section may not be issued with respect to a powerplant or installation unless the Federal Energy Administrator finds (A) that the burning of coal by such plant or installation, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of this chapter, (B) that coal and coal transportation facilities will be available during the period the order is in effect, and (C) in the case of a powerplant, that the prohibition under subsection (a) of this section will not impair the reliability of service in the area served by such plant. Such an order shall be rescinded or modified to the extent the Federal Energy Administrator determines that any requirement described in subparagraph (A), (B), or (C) of this paragraph is no longer met; and such an order may at any time be modified if the Federal Energy Administrator determines that such order, as modified, complies with the requirements of this section.

(2)(A) Before issuing an order under subsection (a) of this section which is applicable to a powerplant or installation for a period ending on or before June 30, 1975, the Federal Energy Administrator (i) shall give notice to the public and afford interested persons an opportunity for written presentations of data, views, and arguments, (ii) shall consult with the Administrator of the Environmental Protection Agency, and (iii) shall take into account the likelihood that the powerplant or installation will be permitted to burn coal after June 30, 1975.

(B) An order described in subparagraph (A) of this paragraph shall not become effective until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c–10(d)(1)(A) of Title 42 is the earliest date that such plant or installation will be able to comply with the air pollution requirements which will be applicable to it. Such order shall not be effective for any period certified by the Administrator of the Environmental Protection Agency pursuant to section 1857c–10(d)(3)(B) of Title 42.

(3)(A) Before issuing an order under subsection (a) of this section which is applicable to a powerplant or installation after June 30, 1975 (or modifying an order to which paragraph (2)

applies, so as to apply such order to a powerplant or installation after such date), the Federal Energy Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

(B) An order (or modification thereof) described in subparagraph (A) of this paragraph shall not become effective until (i) the Administrator of the Environmental Protection Agency notifies the Federal Energy Administrator under section 1857c-10(d)(1)(B) of Title 42 that such plant or installation will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 1857c-10(c) of Title 42, or (ii) if such notification is not given, the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c-10(d)(1)(B) of Title 42 is the earliest date that such plant or installation will be able to comply with all applicable requirements of such 1857c-10 of Title 42. Such order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 1857c-10(d)(3)(B) of Title 42.

**(c) Construction and design of powerplants or other major fuel burning installations.**

The Federal Energy Administrator may require that any powerplant or other major fuel burning installation in the early planning process (other than a combustion gas turbine or combined cycle unit) be designed and constructed so as to be capable of using coal as its primary energy source. No powerplant or other major fuel burning installation may be required under this subsection to be so designed and constructed, if the Administrator determines that (1) in the case of a powerplant to do so is likely to result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner to recover any capital investment made as a result of any requirement imposed under this subsection.

**(d) Allocation of coal.**

The Federal Energy Administrator may, by rule or order, allocate coal (1) to any powerplant or major fuel-burning installation to which an order under subsection (a) of this section has been issued, or (2) to any other person to the extent necessary to carry out the purposes of this chapter.

**(e) Definitions.**

For purposes of this section:

(1) The term "powerplant" means a fossil-fuel fired electric generating unit which produces electric power for purposes of sale or exchange.

(2) The term "coal" includes coal derivatives.

**(f) Expiration of authority; effective dates.**

(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, June 30, 1977. Such a rule or order may take effect at any time before January 1, 1985.

(2) Authority to amend, repeal, rescind, modify, or enforce such rules or orders shall expire at midnight, December 31, 1984; but the expiration of such authority shall not affect any administrative or judicial proceeding which relates to any act or omission which occurred prior to January 1, 1985. (Pub. L. 93-319, § 2, June 22, 1974, 88 Stat. 246, amended Pub. L. 94-163, title I, § 101, Dec. 22, 1975, 89 Stat. 875.)

REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 93-319 which, in addition to enacting this chapter, enacted sections 1857c-10 and 1857f-6f and amended sections 1857b-1, 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, 1857f-6e, 1857h-5, and 1857*l* of Title 42, The Public Health and Welfare.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-163, § 101(b) authorized the Administrator to prohibit any powerplant or other fuel burning installation from burning natural gas or petroleum products as its primary energy source if such powerplant or other installation is required to meet a design or construction requirement under subsec. (c) of this section.

Subsec. (c). Pub. L. 94-163, § 101(c), inserted "or other major fuel burning installation" after "powerplant" wherever it appears and inserted "in the case of a powerplant" after "if the Administrator determines that (1)".

Subsec. (f)(1). Pub. L. 94-163, § 101(a)(1), substituted "June 30, 1977" for "June 30, 1975" and "January 1, 1985" for "January 1, 1979".

Subsec. (f)(2). Pub. L. 94-163, § 101(a)(2), substituted "December 31, 1984" for "December 31, 1978" and "January 1, 1985" for "January 1, 1979".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 793, 797 of this title; title 42 section 1857c-10.

**§ 793. Protection of public health and environment.**

**(a) Distribution of low sulfur fuel.**

Any allocation program provided for in section 792 of this title or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the United States designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

**(b) Study of chronic effects of sulfur oxide emissions among exposed populations.**

In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversations to burning coal to which section 1857c-10 of Title 42 applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

**(c) Major Federal actions significantly affecting the quality of the human environment.**

(1) No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

(2) No action under section 792 of this title for a period of one year after initiation of such action shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. However, before any action under section 792 of this title that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 4332(2)(C) of Title 42, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 792 of this title which will be in effect for more than a one-year period or any action to extend an action taken under section 792 of this title to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act, notwithstanding any other provision of this chapter.

**(d) Importation of hydroelectric energy.**

In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 4332 of Title 42 for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York. (Pub. L. 93–319, § 7, June 22, 1974, 88 Stat. 259.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, which is classified to section 751 et seq. of this title.

The Clean Air Act, referred to in subsec. (c), is Act July 14, 1955, c. 360, which is classified to section 1857 et seq. of Title 42, The Public Health and Welfare.

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified to section 4321 et seq. of Title 42, The Public Health and Welfare.

This "chapter", referred to in subsec. (c)(2), was in the original this "Act" meaning Pub. L. 93–319 which, in addition to enacting this chapter, enacted sections 1857c–10 and 1857f–6f and amended sections 1857b–1, 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, 1857f–6e, 1857h–5, and 1857*l* of Title 42, The Public Health and Welfare.

**§ 794. Energy conservation study.**

(a) The Federal Energy Administrator shall conduct a study on potential methods of energy conservation and, not later than six months after June 22, 1974, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products, or goods, including an analysis of balance-of-payments and foreign relations implications of any such restrictions;

(2) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials; and

(3) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within ninety days of June 22, 1974, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of Title 23 for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

(Pub. L. 93–319, § 8, June 22, 1974, 88 Stat. 260.)

**§ 795. Report to Congress by January 31, 1975.**

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections

3 through 7 of the Energy Supply and Environmental Coordination Act of 1974. (Pub. L. 93–319, § 9, June 22, 1974, 88 Stat. 261.)

REFERENCES IN TEXT

Sections 3 through 7 of the Energy Supply and Environmental Coordination Act of 1974, referred to in text, are sections 3 through 7 of Pub. L. 93–319, June 22, 1974, 88 Stat. 248–260, which sections enacted section 793 of this title and section 1857c–10 of Title 42, The Public Health and Welfare, and amended sections 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, and 1857h–5 of Title 42.

**§ 796. Reporting of energy information.**

**(a) Authority of Federal Energy Administrator to request, acquire, and collect energy information; rules and regulations.**

For the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information, the Federal Energy Administrator shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this chapter or the Emergency Petroleum Allocation Act of 1973. The Federal Energy Administrator shall promptly promulgate rules pursuant to subsection (b)(1)(A) of this section requiring reports of such information to be submitted to the Federal Energy Administrator at least every ninety calendar days.

**(b) Powers of Federal Energy Administrator in obtaining energy information; verification of accuracy; compliance orders.**

(1) In order to obtain energy information for the purpose of carrying out the provisions of subsection (a) of this section, the Federal Energy Administrator is authorized—

(A) to require, by rule, any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources to submit reports;

(B) to sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(C) to require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information; and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Federal Energy Administrator may determine; and

(D) to administer oaths.

(2) For the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Federal Energy Administrator, the Federal Energy Administrator, or any officer or employer[1] duly designated by him, upon presenting appropriate credentials and a written notice from the Federal Energy Administrator to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any such energy information.

(3) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General at the request of the Federal Energy Administrator, in the case of refusal to obey a subpena or order of the Federal Energy Administrator issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

**(c) Development of initial report; quarterly reports; accounting practices.**

(1) The Federal Energy Administrator shall exercise the authorities granted to him under subsection (b)(1)(A) of this section to develop, within thirty days after June 22, 1974, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;

(B) imports; and

(C) inventories;

of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal.

(2) For each calendar quarter beginning with the first complete calendar quarter following June 22, 1974, the Federal Energy Administrator shall develop and publish a report containing the following energy information:

(A) Imports of crude oil, residual fuel oil, refined petroleum products (by product), natural gas, and coal, identifying (with respect to each such oil, product, gas, or coal) country of origin, arrival point, quantity received, and the geographic distribution within the United States.

(B) Domestic reserves and production of crude oil, natural gas, and coal.

(C) Refinery activities, showing for each refinery within the United States (i) the amounts of crude oil run by such refinery, (ii) amounts of crude oil allocated to such refinery pursuant to regulations and orders of the Federal Energy Administrator, his delegate pursuant to the Emergency Petroleum Allocation Act of 1973, or any other person authorized by law to issue regulations and orders with respect to the allocation of crude oil, (iii) percentage of refinery capacity utilized, and (iv) amounts of products refined from such crude oil.

(D) Report of inventories, on a national, regional, and State-by-State basis—

(i) of various refined petroleum products, related refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) of various refined petroleum products, previous quarter deliveries and anticipated three-month available supplies;

(iii) of anticipated monthly supply of refined petroleum products, amount of set-aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(iv) of LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

[1] So in original. Probably should be "employee".

(3) In order to carry out his responsibilities under subsection (a) of this section, the Federal Energy Administrator shall require, pursuant to subsection (b)(1)(A) of this section, that persons engaged, in whole or in part, in the production of crude oil or natural gas—

(A) keep energy information in accordance with the accounting practices developed pursuant to section 6383 of Title 42, and

(B) submit reports with respect to energy information kept in accordance with such practices. The Administrator shall file quarterly reports with the President and the Congress compiled from accounts kept in accordance with such section 6383 of Title 42 and submitted to the Administrator in accordance with this paragraph. Such reports shall present energy information in the categories specified in subsection (c) of such section 6383 of Title 42 to the extent that such information may be compiled from such accounts. Such energy information shall be collected and such quarterly reports made for each calendar quarter which begins 6 months after the date on which the accounting practices developed pursuant to such section 6383 of Title 42 are made effective.

**(d) Confidential information.**

Upon a showing satisfactory to the Federal Energy Administrator by any person that any energy information obtained under this section from such person would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of Title 18; except that such information, or part thereof, shall not be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administrator for the purpose of carrying out this chapter and the Emergency Petroleum Allocation Act of 1973, (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office, when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress, or any committee of Congress upon request of the Chairman.

**(e) Definitions.**

As used in this section:

(1) The term "energy information" includes (A) all information in whatever form on (i) fuel reserves, exploration, extraction, and energy resources (including petrochemical feedstocks) wherever located; (ii) production, distribution, and consumption of energy and fuels wherever carried on; and (B) matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment, and assets, and other matters directly related thereto, wherever they exist.

(2) The term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States.

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

**(f) Availability of energy information.**

Information obtained by the Administration under authority of this chapter shall be available to the public in accordance with the provisions of section 552 of Title 5.

**(g) Independent nature of authority to gather energy information; expiration date.**

(1) The authority contained in this section is in addition to, independent of, not limited by, and not in limitation of, any other authority of the Federal Energy Administrator.

(2) The provisions of this section expire at midnight, December 31, 1979, but such expiration shall not affect any administrative or judicial proceeding which relates to any act or failure to act if such act or failure to act was not in compliance with the requirements and authorities of this section and occurred prior to midnight, December 31, 1979. (Pub. L. 93–319, § 11, June 22, 1974, 88 Stat. 262, amended Pub. L. 94–163, title V, §§ 505(a), 506, Dec. 22, 1975, 89 Stat. 960.)

REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 93–319 which, in addition to enacting this chapter, enacted sections 1857c–10 and 1857f–6f and amended sections 1857b–1, 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, 1857f–6e, 1857h–5, and 1857l of Title 42, The Public Health and Welfare.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), (c)(2)(C), and (d), is Pub. L. 93–159, Nov. 27, 1974, 87 Stat. 628, which is classified to section 751 et seq. of this title.

AMENDMENTS

1975—Subsec. (c)(3). Pub. L. 94–163, § 505(a), added subsec. (c)(3).

Subsec. (g)(2). Pub. L. 94–163, § 506, substituted "December 31, 1979" for "June 30, 1975" in two places.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 505(b) of Pub. L. 94–163 provided that: "The amendment made by subsection (a) to section 11(c) of the Energy Supply and Environmental Coordination Act of 1974 [enacting subsec. (c)(3) of this section] shall take effect on the first day of the first accounting quarter to which such practices apply."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 797 of this title; title 42 sections 5917, 6274, 6299, 6346, 6381.

**§ 797. Enforcement.**

(a) It shall be unlawful for any person to violate any provision of section 792 of this title (relating to coal conversion and allocation) or section 796 of this title (relating to energy information) or to violate any rule, regulation, or order issued pursuant to any such provision.

(b)(1) Whoever violates any provision of subsection (a) of this section shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (a) of this section shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any coal in violation of an order or regulation issued pursuant to section 792(d) of this title. Any person who knowingly and willfully violates this paragraph after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to section 792(d) of this title shall be fined not more than $50,000, or imprisoned not more than six months, or both.

(4) Whenever it appears to the Federal Energy Administrator or any person authorized by the Federal Energy Administrator to exercise authority under section 792 of this title or section 796 of this title that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of subsection (a) of this section the Federal Energy Administrator or such person may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (a) of this section.

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (a) of this section may bring a civil action for appropriate relief, including an action for a declaratory judgment or writ of injunction. United States district courts shall have jurisdiction of actions under this paragraph without regard to the amount in controversy. Nothing in this paragraph shall authorize any person to recover damages. (Pub. L. 93–319, § 12, June 22, 1974, 88 Stat. 264.)

**§ 798. Definitions.**

(a) For purposes of this chapter and the Clean Air Act the term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by Federal Energy Administration Act of 1974; except that until such Administrator takes office and after such Administration ceases to exist, such term means any officer of the United States designated as Federal Energy Administrator by the President for purposes of this chapter and section 1857c–10 of Title 42.

(b) For purposes of this chapter, the term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in section 752(5) of this title. (Pub. L. 93–319, § 14, June 22, 1974, 88 Stat. 265.)

REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 93–319 which, in addition to enacting this chapter, enacted sections 1857c–10 and 1857f–6b and amended sections 1857b–1, 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, 1857f–6e, 1857h–5, and 1857*l* of Title 42, The Public Health and Welfare.

The Clean Air Act, referred to in subsec. (a), is Act July 14, 1955, c. 360, which is classified to section 1857 et seq. of Title 42, The Public Health and Welfare.

The Federal Energy Administration Act of 1974, referred to in subsec. (a), is Pub. L. 93–275, May 7, 1974, 88 Stat. 96, which is classified to section 761 et seq. of this title.

## Chapter 21.—NATIONAL POLICY ON EMPLOYMENT AND PRODUCTIVITY

Sec.

1026. National Commission on Productivity and Work Quality [New; Repealed].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 31 section 1322.

**§ 1023. Council of Economic Advisers.**

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of 1970 Reorg. Plan No. 2, redesignated the Bureau of the Budget as the Office of Management and Budget. See Office of Management and Budget note set out under this section in the main volume.

EXECUTIVE ORDER NO. 11453

Ex. Ord. No. 11453, Jan. 24, 1969, 34 F.R. 1301, set out as a note under this section, which established the Cabinet Committee on Economic Policy, was revoked by Ex. Ord. No. 11702, Jan. 25, 1973, 38 F.R. 2957, set out as a note under section 887d of Title 20, Education.

**§ 1024. Joint Economic Committee.**

* * * * *

**(e) Appropriations.**

To enable the joint committee to exercise its powers, functions, and duties under this chapter, there are authorized to be appropriated for each fiscal year such sums as may be necessary, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman or vice chairman, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

* * * * *

(As amended Dec. 27, 1974, Pub. L. 93–554, title I, § 101, 88 Stat. 1776.)

AMENDMENTS

1974—Subsec. (e). Pub. L. 93–554 added exception relating to requirement of vouchers for the disbursement of salaries of employees paid at an annual rate.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 101 of Pub. L. 93–554 provided in part that the amendment by Pub. L. 93–554 is effective Jan. 1, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1022 of this title.

**§ 1026. Repealed. Pub. L. 94–136, title VI, § 601, Nov. 28, 1975, 89 Stat. 742.**

Section, Pub. L. 92–210, § 4, Dec. 22, 1971, 85 Stat. 753; Pub. L. 93–34, May 14, 1973, 87 Stat. 72, created the President's National Commission on Productivity and authorized appropriations for its operation through June 30, 1973. Thereafter, the Commission's name was changed to the National Commission on Productivity and Work Quality by Pub. L. 93–311, June 8, 1974, 88 Stat. 236 and appropriations were authorized to continue operations through November 30, 1975, by Pub. L. 94–42, § 2, June 28, 1975, 89 Stat. 232, and Pub. L. 94–100, § 2, Oct. 1, 1975, 89 Stat. 483. See section 2401 et seq. of this title.

## Chapter 22.—TRADE-MARKS

### § 1051. Registration; application; payment of fees; designation of resident for service of process and notice.

The owner of a trade-mark used in commerce may register his trade-mark under this chapter on the principal register established:

(a) By filing in the Patent and Trademark Office—

(1) a written application, in such form as may be prescribed by the Commissioner, verified by the applicant, or by a member of the firm or an officer of the corporation or association applying, specifying applicant's domicile and citizenship, the date of applicant's first use of the mark, the date of applicant's first use of the mark in commerce, the goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods, and including a statement to the effect that the person making the verification believes himself, or the firm, corporation, or association in whose behalf he makes the verification, to be the owner of the mark sought to be registered, that the mark is in use in commerce, and that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive: *Provided,* That in the case of every application claiming concurrent use the applicant shall state exceptions to his claim of exclusive use, in which he shall specify, to the extent of his knowledge, any concurrent use by others, the goods in connection with which and the areas in which each concurrent use exists, the periods of each use, and the goods and area for which the applicant desires registration;

(2) a drawing of the mark; and

(3) such number of specimens or facsimiles of the mark as actually used as may be required by the Commissioner.

(b) By paying into the Patent and Trademark Office the filing fee.

(c) By complying with such rules or regulations, not inconsistent with law, as may be prescribed by the Commissioner.

(d) If the applicant is not domiciled in the United States he shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with him or mailing to him a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.

(As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (d). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING TRADEMARK CASES

Relief as to filing date of trademark application or registration and excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of Title 35, Patents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1059, 1060, 1091, 1126 of this title.

### § 1052. Trade-marks registrable on principal register; concurrent registration.

No trade-mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

* * * * *

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when applied to the good of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided,* That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; or (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons.

* * * * *

(As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

REFERENCES IN TEXT

Acts Mar. 3, 1881, and Feb. 20, 1905, referred to in the text, were prior trade-mark registration acts which were repealed effective one year from July 5, 1946, insofar as

inconsistent with this chapter, by section 46 (a) of act July 5, 1946. Act Feb. 20, 1905, constituted former sections 81 to 109 of this title.

AMENDMENTS

1975—Subsec. (d). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1064, 1068, 1091, 1094, 1126 of this title.

**§ 1057. Certificates of registration.**

**(a) Issuance and form.**

Certificates of registration of marks registered upon the principal register shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and shall be signed by the Commissioner or have his signature placed thereon, and a record thereof shall be kept in the Patent and Trademark Office. The registration shall reproduce the mark, and state that the mark is registered on the principal register under this chapter, the date of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, the date on which the application for registration was received in the Patent and Trademark Office, and any conditions and limitations that may be imposed in the registration.

* * * * *

**(c) Issuance to assignee.**

A certificate of registration of a mark may be issued to the assignee of the applicant, but the assignment must first be recorded in the Patent and Trademark Office. In case of change of ownership the Commissioner shall, at the request of the owner and upon a proper showing and the payment of the fee provided in this chapter, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

**(d) Surrender, cancellation, or amendment by registrant.**

Upon application of the registrant the Commissioner may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the Patent and Trademark Office. Upon application of the registrant and payment of the prescribed fee, the Commissioner for good cause may permit any registration to be amended or to be disclaimed in part: *Provided*, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Patent and Trademark Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof.

**(e) Copies of Patent and Trademark Office records as evidence.**

Copies of any records, books, papers, or drawings belonging to the Patent and Trademark Office relating to marks, and copies of registrations, when authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name by an employee of the Office duly designated by the Commissioner, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the fee required by law shall have such copies.

**(f) Correction of Patent and Trademark Office mistake.**

Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake, shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration certificate and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

* * * * *

(As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in three places.

Subsec. (c). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (d). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (e). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (f). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title.

**§ 1058. Duration of registration; cancellation; affidavit of continued use; notice of Commissioner's action.**

(a) Each certificate of registration shall remain in force for twenty years: *Provided*, That the registration of any mark under the provisions of this chapter shall be canceled by the Commissioner at the end of six years following its date, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Special notice of the requirement for such affidavit shall be attached to each certificate of registration.

(b) Any registration published under the provisions of subsection (c) of section 1062 of this title shall be canceled by the Commissioner at the end of six years after the date of such publication unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and

Trademark Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

(c) The Commissioner shall notify any registrant who files either of the above-prescribed affidavits of his acceptance or refusal thereof and, if a refusal, the reasons therefor. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1113 of this title.

**§ 1060. Assignment of mark; execution; recording; purchaser without notice.**

A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark, and in any such assignment it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment and when recorded in the Patent and Trademark Office the record shall be prima facie evidence of execution. An assignment shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded in the Patent and Trademark Office within three months after the date thereof or prior to such subsequent purchase. A separate record of assignments submitted for recording hereunder shall be maintained in the Patent and Trademark Office.

An assignee not domiciled in the United States shall be subject to and comply with the provisions of section 1051(d) of this title. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in three places.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1062. Publication; proceedings on refusal of registration; republication of marks registered under prior acts.**

(a) Upon the filing of an application for registration and payment of the fee provided in this chapter, the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, the Commissioner shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office: *Provided*, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 1066 of this title the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.

* * * * *

(As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1058, 1063, 1064, 1065, 1091, 1094, 1113, 1115 of this title.

**§ 1063. Opposition to registration.**

Any person who believes that he would be damaged by the registration of a mark upon the principal register may, upon payment of the required fee, file a verified opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered. Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Commissioner for good cause. The Commissioner shall notify the applicant of each extension of the time for filing opposition. An unverified opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing to be fixed by the Commissioner. An opposition may be amended under such conditions as may be prescribed by the Commissioner. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93–600, § 1, 88 Stat. 1955.)

AMENDMENTS

1975—Pub. L. 93–600 substituted provisions relating to extensions of time for filing opposition upon written request prior to the expiration of the thirty-day period for an additional thirty days, and further extensions for good cause, for provisions relating to extensions of the time for filing opposition for good cause shown.

Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 4 of Pub. L. 93–600 provided that: "This Act [amending this section and sections 1071 and 1117 of this title] shall become effective upon enactment [Jan. 2, 1975], but shall not affect any suit, proceeding, or appeal then pending."

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title.

**§ 1065. Incontestability of right to use mark under certain conditions.**

Except on a ground for which application to cancel may be filed at any time under subsections (c)

and (e) of section 1064 of this title, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of the publication under this chapter of such registered mark, the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided*, That—

(1) there hase been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and

(2) there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of; and

(3) an affidavit is filed with the Commissioner within one year after the expiration of any such five-year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such five consecutive years and is still in use in commerce, and other matters specified in subsections (1) and (2) of this section; and

(4) no incontestable right shall be acquired in a mark which is the common descriptive name of any article or substance, patented or otherwise.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this chapter shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Commissioner within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 1062 of this title.

The Commission shall notify any registrant who files the above-prescribed affidavit of the filing thereof. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Par. (2). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1094, 1115 of this title.

**§ 1067. Interference, opposition, and proceedings for concurrent use registration or for cancellation; notice; Trademark Trial and Appeal Board.**

In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

The Trademark Trial and Appeal Board shall include the Commissioner, the Assistant Commissioners, and such Patent and Trademark Office employees, designated by the Commissioner and whose qualifications have been approved by the Civil Service Commission as being adequate for appointment to the position of examiner in charge of interferences. Each case shall be heard by at least three members of the Board, the members hearing such case to be designated by the Commissioner. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title.

**§ 1069. Application of equitable principles in inter partes proceedings.**

In all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable may be considered and applied. The provisions of this section shall also govern proceedings heretofore begun in the Patent and Trademark Office and not finally determined. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1071. Appeal to courts.**

**(a) Persons entitled to appeal; Court of Customs and Patent Appeals; waiver of civil action; election of civil action by adverse party; procedure.**

* * * * *

(2) Such an appeal to the United States Court of Customs and Patent Appeals shall be taken by filing a notice of appeal with the Commissioner, within sixty days after the date of the decision appealed from or such longer time after said date as the Commissioner appoints. The notice of such appeal shall specify the party or parties taking the appeal, shall designate the decision or part thereof appealed from, and shall state that the appeal is taken to said court.

(3) The court shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee, and in an ex parte case the Commissioner shall furnish the court with a brief explaining the grounds of the decision of the Patent and Trademark Office, touching all the points involved in the appeal.

(4) The court shall decide such appeal on the evidence produced before the Patent and Trademark

Office. The court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent and Trademark Office and govern further proceedings in the case.

**(b) Civil action; persons entitled to; jurisdiction of court; status of Commissioner; procedure.**

* * * * *

(3) In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In suits brought hereunder, the record in the Patent and Trademark Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party of the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. (As amended Jan. 2, 1975, Pub. L 93–596, § 1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93–600, § 2, 88 Stat. 1955.)

AMENDMENTS

1975—Subsec. (a)(2). Pub. L. 93–600 substituted provisions relating to filing of notice of appeal with the Commissioner and the contents of such notice of appeal, for provisions relating to giving notice of appeal to the Commissioner and requiring filing in the Patent Office reasons for appeal.

Subsec. (a)(3). Pub. L. 93–600 added provision requiring the Commissioner to furnish the court with a brief explaining the grounds of the decision of the Office.

Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (a)(4). Pub. L. 93–600 substituted "decide" for "hear and determine" and struck out "Upon its determination," preceding "the court shall return" and provision requiring the decision to be confined to the points set forth in the reasons of appeal.

Pub. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (b)(3). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (b)(4). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93–600 effective on Jan. 2, 1975, but not affecting any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93–600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 1542.

**§ 1092. Publication; not subject to opposition; cancellation.**

Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent and Trademark Office. Whenever any person believes that he is or will be damaged by the registration of a mark on this register he may at any time, upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor, apply to the Commissioner to cancel such registration. The Commissioner shall refer such application to the Trademark Trial and Appeal Board which shall give notice thereof to the registrant. If it is found after a hearing before the Board that the registrant was not entitled to register the mark at the time of his application for registration thereof, or that the mark is not used by the registrant or has been abandoned, the registration shall be canceled by the Commissioner. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1111. Notice of registration; display with mark; recovery of profits and damages in infringement suit.**

Notwithstanding the provisions of section 1072 of this title, a registrant of a mark registered in the Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark as used the words "Registered in U.S. Patent and Trademark Office" or "Reg. U.S. Pat. & Tm. Off." or the letter R enclosed within a circle, thus ®; and in any suit for infringement under this chapter by such a registrant failing to give such notice of registration, no profits and no damages shall be recovered under the provisions of this chapter unless the defendant had actual notice of the registration. (As amended Jan. 2, 1975, Pub. L. 93–596, §§ 1, 2, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark as used the words 'Registered in U.S. Patent and Trademark Office' or 'Reg. U.S. Pat. & Tm. Off.'" for "Patent Office, may give notice that his mark is registered by displaying with the mark as used the words 'Registered in U.S. Patent Office' or 'Reg. U.S. Pat. Off.'".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4 of Pub. L. 93–596 provided that: "This Act [amending this section and sections 1051, 1052, 1057, 1058, 1060, 1062, 1063, 1065, 1067, 1069, 1071, 1092, 1112, 1113, 1116–1120, 1123, and 1127 of this title, and sections 2–4, 6–8, 10, 11, 21–26, 31–33, 41, 104, 119, 121, 122, 135, 142–144, 146, 152, 153, 253–255, 261, 288, and 293 of Title 35, Patents, and enacting provisions set out as a note under section 1 of Title 35] shall become effective upon enactment [Jan. 2, 1975]. However, any registrant may continue to give notice of his registration in accordance with section 29 of the Trademark Act of 1946 (60 Stat. 427), as amended Oct. 9, 1962 (76 Stat. 769) [this section], as an alternative to notice in accordance with section 29 of the Trademark Act as amended by section

2 of this Act, regardless of whether his mark was registered before or after the effective date of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1117 of this title.

**§ 1112. Classification of goods and services; registration in plurality of classes.**

The Commissioner may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant's rights. The applicant may file an application to register a mark for any or all of the goods and services upon or in connection with which he is actually using the mark: *Provided,* That when such goods or services fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1113. Fees and charges.**

(a) The following fees shall be paid to the Patent and Trademark Office under this chapter:

* * * * *

(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent and Trademark Office, not specified above.

(c) The Commissioner may refund any sum paid by mistake or in excess. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1116. Same; injunctions; enforcement; notice to Commissioner.**

The several courts vested with jurisdiction of civil actions arising under this chapter shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

* * * * *

(As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1117. Same; recovery for violation of rights; profits, damages and costs; attorney fees.**

When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93–600, § 3, 88 Stat. 1955.)

AMENDMENTS

1975—Pub. L. 93–600 added provisions relating to awarding of attorney fees in exceptional cases.

Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93–600 effective on Jan. 2, 1975, but not affecting any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93–600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1118. Same; destruction of infringing articles.**

In any action arising under this chapter, in which a violation of any right of the registrant of a mark registered in the Patent and Trademark Office shall have been established, the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the registered mark or any reproduction, counterfeit, copy, or colorable imitation there-

of, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1119. Same; power of court over registration.**

In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Commissioner, who shall make appropriate entry upon the records of the Patent and Trademark Office and shall be controlled thereby. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1120. Same; civil liability for false or fraudulent registration.**

Any person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office.**

The Commissioner shall make rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office under this chapter. (As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

**§ 1127. Construction and definitions; intent of chapter.**

In the construction of this chapter, unless the contrary is plainly apparent from the context—

The United States includes and embraces all territory which is under its jurisdiction and control.

* * * * *

The terms "applicant" and "registrant" embrace the legal representatives, predecessors, successors and assigns of such applicant or registrant.

The term "Commissioner" means the Commissioner of Patents and Trademarks.

The term "related company" means any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used.

* * * * *

The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

The term "registered mark" means a mark registered in the United States Patent and Trademark Office under this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920. The phrase "marks registered in the Patent and Trademark Office" means registered marks.

* * * * *

(As amended Jan. 2, 1975, Pub. L. 93–596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office" in two places and "Commissioner of Patents and Trademarks" for "Commissioner of Patents" in the definition of "Commissioner".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

## Chapter 25.—FLAMMABLE FABRICS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2079 of this title.

**§ 1191. Definitions.**

APPROPRIATIONS

Section 13 of act June 30, 1953, as amended by Pub. L. 90–189, § 9, Dec. 14, 1967, 81 Stat. 573; Pub. L. 92–542, § 1, Oct. 25, 1972, 86 Stat. 1108, provided that: "There are hereby authorized to be appropriated $1,500,000 for the fiscal year ending June 30, 1968, $2,250,000 each for the fiscal year ending June 30, 1969, and the fiscal year ending June 30, 1970, and $4,000,000 for the fiscal year ending June 30, 1973, to carry out the provisions of this Act [this chapter]."

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

**§§ 1192 to 1197.**

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

**§ 1198. Shipments from foreign countries; demand for redelivery; claim for liquidated damages.**

An imported product, fabric, or related material to which flammability standards under this chapter are applicable shall not be delivered from customs custody except as provided in section 1499 of Title 19. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 1499 of Title 19 and fails to conform with an applicable flammability standard in effect on the date of entry of such merchandise, the Secretary of the Treasury shall demand redelivery and in the absence thereof shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall be not less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above. (June 30, 1953, ch. 164, § 9, 67 Stat. 114; Dec. 14, 1967, Pub. L. 90–189, § 7, 81 Stat. 572.)

CODIFICATION

Section is set out in this supplement to correct the omission of the word "custody" in the main edition.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

**§§ 1199 to 1203.**

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

**§ 1204. National Advisory Committee for Flammable Fabrics Act.**

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

## Chapter 26.—HOUSEHOLD REFRIGERATORS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2079 of this title.

**§§ 1211 to 1214.**

TRANSFER OF FUNCTIONS

The functions of the Secretary of Commerce and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

Section 1211 is referred to in section 2079 of this title.

## Chapter 28.—DISCLOSURE OF AUTOMOBILE INFORMATION

**§ 1231. Definitions.**

For purposes of this chapter—

* * * * *

(h) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. New automobiles delivered to, or for further delivery to, ultimate purchasers within the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, the Trust Territories of the Pacific, the Canal Zone, Wake Island, Midway Island, Kingman Reef, Johnson Island, or within any other place under the jurisdiction of the United States shall be deemed to have been distributed in commerce. (As amended Pub. L. 92–359, July 28, 1972, 86 Stat. 502.)

AMENDMENTS

1972—Subsec. (h). Pub. L. 92–359 added provision that new automobiles delivered to ultimate purchasers within the United States and other enumerated areas shall be deemed to have been distributed in commerce.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2006 of this title.

**§ 1232. Label and entry requirements.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1233, 2006 of this title.

**§ 1232a. Repealed. Pub. L. 92–178, title IV, § 401(g)(7)(A), Dec. 10, 1971, 85 Stat. 534.**

Section, Pub. L. 91–614, title III, § 304, Dec. 31, 1970, 84 Stat. 1845, related to Federal manufacturers excise tax on labels and provided for violations and penalties.

EFFECTIVE DATE OF REPEAL

Section 401(g)(7)(B) of Pub. L. 92–178 provided that: "Subparagraph (A) [repealing this section] shall apply to acts (or failures to act) after the date of the enactment of this Act [Dec. 10, 1971]."

## Chapter 30.—HAZARDOUS SUBSTANCES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2079 of this title.

**§ 1261. Definitions.**

For the purposes of this chapter—

* * * * *

(f) The term "hazardous substance" means:

* * * * *

(2) The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, but such term shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of paragraph (1) of this subsection by reason of bearing or containing such a pesticide.

* * * * *

(As amended Pub. L. 92–516, § 3(1), Oct. 21, 1972, 86 Stat. 998.)

AMENDMENTS

1972—Subsec. (f)(2). Pub. L. 92–516 substituted "pesticides" for "economic poisons" and "a pesticide" for "an economic poison" wherever appearing therein.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–516 effective at the close of Oct. 21, 1972, except if regulations are necessary for the implementation of any provision that becomes effective on Oct. 21, 1972, and continuation in effect of subchapter I of chapter 6 of Title 7, and regulations thereunder, relating to the control of economic poisons, as in existence prior to Oct. 21, 1972, until superseded by provisions of Pub. L. 92–516 and regulations thereunder, see section 4 of Pub. L. 92–516, set out as a note under section 136 of Title 7, Agriculture.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1262, 1471 of this title.

§§ 1262 to 1274.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

## Chapter 32.—TELECASTING OF PROFESSIONAL SPORTS CONTESTS

§ 1293. Intercollegiate and interscholastic football contest limitations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 47 section 331.

## Chapter 36.—CIGARETTE LABELING AND ADVERTISING

§ 1332. Definitions.

As used in this chapter—

* * * * *

(7) The term "little cigar" means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which one thousand units weigh not more than three pounds.

(As amended Pub. L. 93–109, § 2, Sept. 21, 1973, 87 Stat. 352.)

AMENDMENTS

1973—Subsec. (7). Pub. L. 93–109 added subsec. (7).

EFFECTIVE DATE OF 1973 AMENDMENT

Section 4 of Pub. L. 93–109 provided that: "The amendment made by this Act [enacting subsec. (7) of this section and amending section 1335 of this title] shall become effective thirty days after the date of enactment [Sept. 21, 1973]."

SHORT TITLE OF 1973 AMENDMENT

Section 1 of Pub. L. 93–109 provided: "That this Act [which enacted subsec. (7) of this section and amended section 1335 of this title] may be cited as the 'Little Cigar Act of 1973'."

§ 1335. Unlawful advertisements on medium of electronic communication.

After January 1, 1971, it shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission. (As amended Pub. L. 93–109, § 3, Sept. 21, 1973, 87 Stat. 352.)

AMENDMENTS

1973—Pub. L. 93–109 extended the prohibition against advertisements to little cigars.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–109 effective thirty days after Sept. 21, 1973, see section 4 of Pub. L. 93–109, set out as a note under section 1332 of this title.

## Chapter 38.—TRAFFIC AND MOTOR VEHICLE SAFETY

### SUBCHAPTER I—MOTOR VEHICLE SAFETY STANDARDS

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(d) Orders of Secretary against manufacturer; conditions for issuance.
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1418. Information, disclosure, and recordkeeping; confidential information.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1920, 2002 of this title; title 42 section 4905; title 49 section 1655.

## SUBCHAPTER I.—MOTOR VEHICLE SAFETY STANDARDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1912, 1920 of this title.

### PART A—GENERAL PROVISIONS

AMENDMENTS

1974—Pub. L. 93–492, title I, § 102(b)(1), Oct. 27, 1974, 88 Stat. 1477, added heading "Part A—General Provisions".

### § 1391. Definitions.

As used in this subchapter——

* * * * *

(10) "Secretary" means the Secretary of Transportation.

* * * * *

(14) "schoolbus" means a passenger motor vehicle which is designed to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools; and

(15) "schoolbus equipment" means equipment designed primarily as a system, part, or component of a schoolbus, or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as an accessory or addition to a schoolbus. (As amended Pub. L. 93–492, title I, § 110(a), title II, § 201, Oct. 27, 1974, 88 Stat. 1484.)

AMENDMENTS

1974—Par. (10). Pub. L. 93–492, § 110(a), substituted "the Secretary of Transportation" for "Secretary of Commerce".

Pars. (14), (15). Pub. L. 93–492, § 201, added pars. (14) and (15).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment of par. (10) by Pub. L. 93–492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2052 of this title.

### § 1392. Motor vehicle safety standards.

* * * * *

(i) Schoolbus and schoolbus equipment safety standards.

(1)(A) Not later than 6 months after October 27, 1974, the Secretary shall publish proposed Federal motor vehicle safety standards to be applicable to schoolbuses and schoolbus equipment. Such proposed standards shall include minimum standards for the following aspects of performance:

(i) Emergency exits.

(ii) Interior protection for occupants.

(iii) Floor strength.

(iv) Seating systems.

(v) Crash worthiness of body and frame (including protection against rollover hazards).

(vi) Vehicle operating systems.

(vii) Windows and windshields.

(viii) Fuel systems.

(B) Not later than 15 months after October 27, 1974, the Secretary shall promulgate Federal motor vehicle safety standards which shall provide minimum standards for those aspects of performance set out in clauses (i) through (viii) of subparagraph (A) of this paragraph, and which shall apply to each schoolbus and item of schoolbus equipment which is manufactured in or imported into the United States on or after the expiration of the 9-month period which begins on the date of promulgation of such safety standards.

(2) The Secretary may prescribe regulations requiring that any schoolbus be test-driven by the manufacturer before introduction into commerce. (As amended Pub. L. 93–492, title II, § 202, Oct. 27, 1974, 88 Stat. 1484.)

AMENDMENTS

1974—Subsec. (i). Pub. L. 93–492 added subsec. (i).

FUEL SYSTEM INTEGRITY STANDARD

Section 108 of Pub. L. 93–492 provided that:

"(a) *Ratification of Standard.*—Federal Motor Vehicle Safety Standard Number 301 (49 CFR 571.301–75; Docket No. 73–20, Notice 2) as published on March 21, 1974 (39 F.R. 10588–10590) shall take effect on the dates prescribed in such standard (as so published).

"(b) *Amendment or repeal of standard.*—The Secretary may amend the standard described in subsection (a) in order to correct technical errors in the standard, and may amend or repeal such standard if he determines such amendment or repeal will not diminish the level of motor vehicle safety."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1394, 1397, 1402, 1410a, 1411, 1412 of this title.

**§ 1393. National Motor Vehicle Safety Advisory Council.**

**(a) Establishment; membership; "representative of the general public"; publication of names of members; selection of Chairman.**

(1) The Secretary shall establish a National Motor Vehicle Safety Advisory Council, a majority of which shall be representatives of the general public, including representatives of State and local governments, and the remainder shall include representatives of motor vehicle manufacturers, motor vehicle equipment manufacturers, and motor vehicle dealers.

(2) For the purposes of this section, the term "representative of the general public" means an individual who (A) is not in the employ of, or holding any official relation to any person who is (i) a manufacturer, dealer, or distributor, or (ii) a supplier of any manufacturer, dealer, or distributor, (B) does not own stock or bonds of substantial value in any person described in subparagraph (A) (i) or (ii), and (C) is not in any other manner directly or indirectly pecuniarily interested in such a person. The Secretary shall publish the names of the members of the Council annually and shall designate which members represent the general public. The Chairman of the Council shall be chosen by the Council from among the members representing the general public.

* * * * *

(As amended Pub. L. 93–492, title I, § 107, Oct. 27, 1974, 88 Stat. 1481.)

REPEAL OF SECTION

*Section 107(b) of Pub. L. 93–492 provided for the repeal of this section effective October 1, 1977.*

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–492 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment of subsec. (a) by Pub. L. 93–492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

**§ 1397. Prohibition against manufacture, sale, delivery, or importation of substandard vehicles and against rendering inoperative certain devices, elements of design or motor vehicle equipment.**

**(a) Access to records; certificate; notification of defect; "motor vehicle repair business" defined; exemptions from inoperation restriction; exemption of safety belt interlocks and continuous buzzers.**

(1) No person shall—

(A) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect under this subchapter unless it is in conformity with such standard except as provided in subsection (b) of this section;

(B) fail or refuse access to or copying records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 1401 of this title; fail to keep specified records in accordance with such section; or fail or refuse to permit impounding, as required under section 1401(a) of this title;

(C) fail to issue a certificate required by section 1403 of this title, or issue a certificate to the effect that a motor vehicle or item of motor vehicle equipment conforms to all applicable Federal motor vehicle safety standards, if such person in the exercise of due care has reason to know that such certificate is false or misleading in a material respect;

(D) fail—

(i) to furnish notification,

(ii) to remedy any defect or failure to comply, or

(iii) to maintain records,

as required by part B of this subchapter; or fail to comply with any order or other requirement applicable to any manufacturer, distributor, or dealer pursuant to such part B;

(E) fail to comply with any rule, regulation, or order issued under section 1401 or 1404 of this title;

(F) to fail to comply with regulations of the Secretary under section 1392(i)(2) of this title.

(2)(A) No manufacturer, distributor, dealer, or motor vehicle repair business shall knowingly render inoperative, in whole or part, any device or element of design installed on or in a motor vehicle or item of motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard, unless such manufacturer, distributor, dealer, or repair business reasonably believes that such vehicle or item of equipment will not be used (other than for testing or similar purposes in the course of maintenance or repair) during the time such device or element of design is rendered inoperative. For purposes of this paragraph, the term "motor vehicle repair business" means any person who holds himself out to the public as in the business of repairing motor vehicles or motor vehicle equipment for compensation.

(B) The Secretary may by regulation exempt any person from this paragraph if he determines that such exemption is consistent with motor vehicle safety and the purposes of this chapter. The Secretary may prescribe regulations defining the term "render inoperative".

(C) This paragraph shall not apply with respect to the rendering inoperative of (i) any safety belt interlock (as defined in section 1410b(f)(i) of this title) or (ii) any continuous buzzer (as defined in section 1410b(f)(4) of this title) designed to indicate that safety belts are not in use.

(D) Paragraph (1)(A) of this subsection shall not apply to the sale or offering for sale of any motor vehicle which has such a buzzer or interlock rendered inoperative by a dealer at the request of the first purchaser of such vehicle.

**(b) Sale or delivery of used vehicles; federal standards for used vehicles; good faith failure to conform to federal safety standards; importation of substandard vehicles.**

(1) Paragraph (1)(A) of subsection (a) of this section shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any motor vehicle or motor vehicle equipment after the first purchase of it in

good faith for purposes other than resale. In order to assure a continuing and effective national traffic safety program, it is the policy of Congress to encourage and strengthen the enforcement of State inspection of used motor vehicles. Therefore to that end the Secretary shall conduct a thorough study and investigation to determine the adequacy of motor vehicle safety standards and motor vehicle inspection requirements and procedures applicable to used motor vehicles in each State, and the effect of programs authorized by this subchapter upon such standards, requirements, and procedures for used motor vehicles, and report to Congress as soon as practicable but not later than September 9, 1967, the results of such study, and recommendations for such additional legislation as he deems necessary to carry out the purposes of this chapter. As soon as practicable after the submission of such report, but no later than one year from the date of submission of such report, the Secretary, after consultation with the Council and such interested public and private agencies and groups as he deems advisable shall establish uniform Federal motor vehicle safety standards applicable to all used motor vehicles. Such standards shall be expressed in terms of motor vehicle safety performance. The Secretary is authorized to amend or revoke such standards pursuant to this chapter.

(2) Paragraph (1)(A) of subsection (a) of this section shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that such vehicle or item of motor vehicle equipment is not in conformity with applicable Federal motor vehicle safety standards, or to any person who, prior to such first purchase, holds a certificate issued by the manufacturer or importer of such motor vehicle or motor vehicle equipment, to the effect that such vehicle or equipment conforms to all applicable Federal motor vehicle safety standards, unless such person knows that such vehicle or equipment does not so conform.

(3) A motor vehicle or item of motor vehicle equipment offered for importation in violation of paragraph (1)(A) of subsection (a) of this section shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary; except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such motor vehicle or item of motor vehicle equipment into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or item of motor vehicle equipment will be brought into conformity with any applicable Federal motor vehicle safety standard prescribed under this subchapter, or will be exported or abandoned to the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the temporary importation of any motor vehicle or item of motor vehicle equipment after the first purchase of it in good faith for purposes other than resale.

(5) Paragraph (1)(A) of subsection (a) of this section shall not apply in the case of a motor vehicle or item of motor vehicle equipment intended solely for export, and so labeled or tagged on the vehicle or item itself and on the outside of the container, if any, which is exported.

**(c) Continuation of common law liability.**

Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law. (As amended Pub. L. 93–492, title I, § 103(a), title II, § 203, Oct. 27, 1974, 88 Stat. 1477, 1485.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (a)(2)(B), was in the original "this Act", meaning Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 718, which enacted this chapter and provisions set out as a note under section 313 of Title 23, Highways.

AMENDMENTS

1974—Subsec. (a)(1). Pub. L. 93–492, §§ 103(a)(1)(A), (2)(A), (B), (3), 203, designated former provisions as par. (1) and redesignated former pars. (1) to (4) as subpars. (A) to (D); inserted in subpar. (B) prohibition against failure to keep specified records and against failure or refusal to permit impounding; added subpar. (E); substituted subpar. (D) provisions for prior prohibition against failure to furnish notification of any defect as required by section 1402 of this title; and added subpar. (F), respectively.

Subsec. (a)(2). Pub. L. 93–492, § 103(a)(1)(A), added par. (2).

Subsec. (b)(1)–(3), (5). Pub. L. 93–492, § 103(a)(1)(B), substituted reference to paragraph "(1)(A)" for "(1)" in pars. (1) to (3) and (5).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 103(a)(1)(A) and 103(a)(1)(B), (2), and (3) of Pub. L. 93–492 effective Oct. 27, 1974, and on sixtieth day after Oct. 27, 1974, respectively, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1398 of this title.

**§ 1398. Civil penalties; Secretary's authority to compromise.**

(a) Whoever violates any provision of section 1397 of this title, or any regulation issued thereunder, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. Such violation of a provision of section 1397 of this title, or regulations issued thereunder, shall constitute a separate violation with respect to each motor vehicle or item of motor vehicle equipment or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty shall not exceed $800,000 for any related series of violations.

* * * * *

(As amended Pub. L. 93–492, title I, § 103(b), Oct. 27, 1974, 88 Stat. 1478.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–492 increased to $800,000 from $400,000 the limitation of maximum civil penalty for related series of violations.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1399, 1415 of this title.

**§ 1399. Jurisdiction of United States District Court.**

**(a) Restraining violations of motor vehicle standards; injunction; notice; opportunity to achieve compliance.**

The United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this subchapter (or rules, regulations or orders thereunder), or to restrain the sale, offer for sale, or the introduction or delivery for introduction, in interstate commerce, or the importation into the United States, of any motor vehicle or item of motor vehicle equipment which is determined, prior to the first purchase of such vehicle in good faith for purposes other than resale, not to conform to applicable Federal motor vehicle safety standards prescribed pursuant to this subchapter, or to contain a defect (A) which relates to motor vehicle safety and (B) with respect to which notification has been given under section 1411 or has been required to be given under section 1412(b) of this title, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance or to remedy the defect. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

* * * * *

**(c) Venue.**

Except as provided in section 1415(a) of this title, actions under subsection (a) of this section and section 1398(a) of this title may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

* * * * *

(As amended Pub. L. 93–492, title I, §§ 102(b)(2), 103(c), Oct. 27, 1974, 88 Stat. 1477, 1478.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–492, § 103(c), inserted in first sentence "(or rules, regulations or orders thereunder)" following "violations of this subchapter" and "or to contain a defect (A) which relates to motor vehicle safety and (B) with respect to which notification has been given under section 1411 or has been required to be given under sction 1412(b) of this title," following "pursuant to this subchapter,".

Subsec. (c). Pub. L. 93–492, § 102(b)(2), inserted introductory text "Except as provided in section 1415(a) of this title,".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1415, 1424 of this title.

**§ 1401. Inspection and investigation: enforcement of this subchapter and rules, regulations, or orders thereunder; motor vehicle accidents.**

**(a)(1) Results of investigations given to Secretary of Treasury or Attorney General for action; cooperation with non-federal officials.**

The Secretary is authorized to conduct any inspection or investigation—

(A) which may be necessary to enforce this subchapter or any rules, regulations, or orders issued thereunder, or

(B) which relates to the facts, circumstances, conditions, and causes of any motor vehicle accident and which is for the purposes of carrying out his functions under this chapter.

The Secretary shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information obtained indicating noncompliance with this subchapter or any rules, regulations, or orders issued thereunder, for appropriate action. In making investigations under subparagraph (B), the Secretary shall cooperate with appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection.

**(2) Entry into factory, warehouse, manufacturing establishment, or premises with motor vehicles or vehicular equipment; impoundment of motor vehicles; inspection with reasonable promptness.**

For purposes of carrying out paragraph (1), officers or employees duly designated by the Secretary, upon presenting appropriate credentials and written notice to the owner, operator, or agent in charge, are authorized at reasonable times and in a reasonable manner—

(A) to enter (i) any factory, warehouse, or establishment in which motor vehicles or items of motor vehicle equipment are manufactured, or held for introduction into interstate commerce or are held for sale after such introduction, or (ii) any premises where a motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident is located;

(B) to impound for a period not to exceed 72 hours, any motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident; and

(C) to inspect any factory, warehouse, establishment, vehicle, or equipment referred to in subparagraph (A) or (B).

Each inspection under this paragraph shall be commenced and completed with reasonable promptness.

**(3) Compensation to vehicle owner; "motor vehicle accident" defined.**

(A) Whenever, under the authority of paragraph (2)(B), the Secretary inspects or temporarily impounds for the purpose of inspection any motor vehicle (other than a vehicle subject to part II of the Interstate Commerce Act) or an item of motor vehicle equipment, he shall pay reasonable compensation to the owner of such vehicle to the extent that such inspection or impounding results in the denial of the use of the vehicle to its owner or in the reduction in value of the vehicle.

(B) As used in this subsection, "motor vehicle accident" means an occurrence associated with the maintenance, use, or operation of a motor vehicle or

item of motor vehicle equipment in or as a result of which any person suffers death or personal injury, or in which there is property damage.

**(b) Records from manufacturers; reports from manufacturers, dealers, or distributors; inspections and examination of relevant documents; records from distributors or dealers.**

Every manufacturer of motor vehicles and motor vehicle equipment shall establish and maintain such records and every manufacturer, dealer, or distributor shall make such reports, as the Secretary may reasonably require to enable him to determine whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this subchapter or any rules, regulations, or orders issued thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this subchapter or any rules, regulations, or orders issued thereunder. Nothing in this subsection shall be construed as imposing recordkeeping requirements on distributors or dealers, except those requirements imposed under section 1418 of this title and regulations and orders promulgated thereunder.

**(c) Procedure; hearings; testimony; sessions; paths; subpenas; access to and copies of documentary evidence; general or special orders for reports or answers to specific questions; contempt of court; witnesses fees and mileage; information from other Federal agencies; limitations of authority to provide information unaffected; detail of personnel.**

(1) For the purpose of carrying out the provisions of this subchapter, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(2) In order to carry out the provisions of this subchapter, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this subchapter.

(3) The Secretary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this subchapter. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under paragraph (1) or paragraph (3) of this subsection, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage which are paid witnesses in the courts of the United States.

(6)(A) The Secretary is authorized to request from any department, agency or instrumentality of the Federal Government such statistics, data, program reports, and other materials as he deems necessary to carry out his functions under this subchapter; and each such department, agency, or instrumentality is authorized and directed to cooperate with the Secretary and to furnish such statistics, data, program reports, and other materials to the Department of Transportation upon request made by the Secretary. Nothing in this subparagraph shall be deemed to affect any provision of law limiting the authority of an agency, department, or instrumentality of the Federal Government to provide information to another agency, department, or instrumentality of the Federal Government.

(B) The head of any Federal department, agency, or instrumentality is authorized to detail, on a reimbursable basis, any personnel of such department, agency, or instrumentality to assist in carrying out the duties of the Secretary under this subchapter.

* * * * *

**(e) Confidential information and trade secrets.**

Except as otherwise provided in section 1418(a)(2) and section 1402(b) of this title, all information reported to or otherwise obtained by the Secretary or his representative pursuant to this subchapter which information contains or relates to a trade secret or other matter referred to in section 1905 of Title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this subchapter or when relevant in any proceeding under this subchapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress. (As amended Pub. L. 93–492, title I, § 104, Oct. 27, 1974, 88 Stat. 1478.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (a)(1)(B), was in the original "this Act" meaning Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 718, which enacted this chapter and provisions set out as a note under section 313 of Title 23, Highways.

Part II of the Interstate Commerce Act, referred to in subsec. (a)(3)(A), is classified to section 301 et seq. of Title 49, Transportation.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–492, § 104(a), designated existing provisions as par. (1), substituted provisions for enforcement of this subchapter and rules, regulations, and orders issued thereunder and compliance therewith for prior provision for enforcement of Federal vehicle safety standards and compliance therewith, and added par. (1) provisions respecting inspection or investigation of motor vehicle accidents, cooperation with nonfederal officials and pars. (2) and (3).

Subsec. (b). Pub. L. 93–492, § 104(a), redesignated former subsec. (c) as (b), substituted requirement for

conformity with rules, regulations, or orders issued under this subchapter for prior required conformity with motor vehicle safety standards prescribed pursuant to this subchapter, required dealer and distributor reports and conformity with the rules, regulations, and orders issued under this subchapter. Former subsec. (b) provisions for entry into factory, warehouse or manufacturing establishment and for reasonable inspection incorporated in subsec. (a) of this section.

Subsec. (c). Pub. L. 93–492, § 104(a) added subsec. (c). Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 93–492, § 104(b), inserted introductory text "Except as otherwise provided in section 1418(a)(2) and section 1402(b) of this title," and substituted "pursuant to this subchapter" for "pursuant to subsection (b) or (c) of this section".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1397, 1402 of this title.

**§ 1402. Cost information.**

**(a) Submission and evaluation.**

Whenever any manufacturer opposes an action of the Secretary under section 1392 of this title, or under any other provision of this chapter, on the ground of increased cost, the manufacturer shall submit such cost information (in such detail as the Secretary may by regulation or order prescribe) as may be necessary in order to properly evaluate the manufacturer's statement. The Secretary shall thereafter promptly prepare an evaluation of such cost information.

**(b) Availability to public; publication in Federal Register; confidentiality of trade secrets and other confidential matter; information to committees of Congress.**

(1) Subject to paragraph (2), such cost information together with the Secretary's evaluation thereof, shall be available to the public. Notice of the availability of such information shall be published in the Federal Register.

(2) If the manufacturer satisfies the Secretary that any portion of such information contains a trade secret or other confidential matter, such portion may be disclosed to the public only in such manner as to preserve the confidentiality of such trade secret or other confidential matter, except that any such information may be disclosed to other officers or employees concerned with carrying out this subchapter or when relevant in any proceeding under this subchapter. Nothing in this subsection shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

**(c) Definition.**

For purposes of this section, the term "cost information" means information with respect to alleged cost increases resulting from action by the Secretary, in such form as to permit the public and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

**(d) Rules and regulations.**

The Secretary is authorized to establish rules and regulations prescribing forms and procedures for the submission of cost information under this section.

**(e) Authority of Secretary under other provisions unaffected.**

Nothing in this section shall be construed to restrict the authority of the Secretary to obtain or require submission of, information under any other provision of this chapter. (Pub. L. 89–563, title I, § 113, as added Pub. L. 93–492, title I, § 105, Oct. 27, 1974, 88 Stat. 1480.)

REFERENCES IN TEXT

"This chapter", referred to in subsecs. (a), (e), was in the original "this Act" meaning Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 718, which enacted this chapter and provisions set out as a note under section 313 of Title 23, Highways.

CODIFICATION

Prior section 1402, Pub. L. 89–563, title I, § 113, Sept. 9, 1966, 80 Stat. 725; Pub. L. 91–265, § 4(a)–(c), May 22, 1970, 84 Stat. 262, related to discovery of defects by manufacturer, providing in subsection: (a) notice to purchaser; (b) notification by certified mail; (c) form and requisites of notification; (d) Secretary's copy of all notices, bulletins, and communications sent by manufacturer to dealers and purchasers concerning defects and disclosure by Secretary; (e) notice by Secretary to manufacturer concerning defects relating to motor vehicle safety or failure to comply with safety standards, presentation of opposing views, and notice to purchasers of defects; (f) records of names and addresses of first purchaser; and (g) retreaded tires, was repealed by section 102(a) of Pub. L. 93–492 effective on sixtieth day after Oct. 27, 1974 (see note under section 1409 of this title), and is now covered by sections 1411 to 1420 of this title.

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SAVINGS PROVISION

Issuance of notification or requirement of such issuance respecting any defect or failure to comply under former section 1402(a), (e) of this title prior to effective date of title I of Pub. L. 93–492, which became effective on sixtieth day after Oct. 27, 1974, as precluding application of sections 1411 to 1420 of this title, see section 102(c) of Pub. L. 93–492, set out as a note under section 1411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1397, 1401 of this title.

**§ 1404. National Traffic Safety Bureau; Traffic Safety Director; appointment.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1397 of this title.

**§ 1408. Annual report to Congress; contents; recommendations.**

(a) The Secretary shall prepare and submit to the President for transmittal to the Congress on July 1 of each year a comprehensive report on the administration of this chapter for the preceding calendar year. Such report shall include but not be restricted to (1) a thorough statistical compilation of the accidents and injuries occurring in such year; (2) a list of Federal motor vehicle safety standards prescribed or in effect in such year; (3) the degree of observance of applicable Federal motor vehicle standards; (4) a summary of all current research

grants and contracts together with a description of the problems to be considered by such grants and contracts; (5) an analysis and evaluation, including relevant policy recommendations, of research activities completed and technological progress achieved during such year; (6) a statement of enforcement actions including judical decisions, settlements, or pending litigation during such year; and (7) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the motoring public.

* * * * *

(As amended Pub. L. 93–492, title I, § 110(b), Oct. 27, 1974, 88 Stat. 1484.)

REFERENCES IN TEXT

"This chapter" referred to in the text, was in the original "this Act". The Act referred to was Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 718, which enacted this chapter and provisions set out as a note under section 313 of Title 23, Highways.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–492 substituted July 1 for March 1 as date for annual report.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

**§ 1409. Authorization of appropriations.**

There are authorized to be appropriated for the purpose of carrying out this chapter, not to exceed $55,000,000 for the fiscal year ending June 30, 1975, and not to exceed $60,000,000 for the fiscal year ending June 30, 1976. (As amended Pub. L. 92–548, § 2, Oct. 25, 1972, 86 Stat. 1159; Pub. L. 93–492, title I, § 101, Oct. 27, 1974, 88 Stat. 1470.)

REFERENCES IN TEXT

"This chapter", referred to in the text, was in the original "this Act". The Act referred to was Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 718, which enacted this chapter and provisions set out as a note under section 313 of Title 23, Highways.

AMENDMENTS

1974—Pub. L. 93–492 authorized appropriations of $55,000,000 and $60,000,000 for fiscal years ending June 30, 1975, and 1976, and deleted provision for $52,714,000 for fiscal year ending June 30, 1973.

1972—Pub. L. 92–548 substituted provisions authorizing to be appropriated for the purposes of carrying out this chapter $52,714,000 for the fiscal year ending June 30, 1973, for provisions authorizing to be appropriated for the purposes of carrying out the provisions of subchapter I of this chapter, other than those relating to tire standards, not to exceed $11,000,000 for fiscal year 1967, $17,000,000 for fiscal year 1968, and $23,000,000 for fiscal year 1969, for the purposes of carrying out the tire safety provisions of subchapter I of this chapter and subchapter II of this chapter, not to exceed $2,900,000 for fiscal year 1967, and $1,450,000 for fiscal years 1968 and 1969, and for the purposes of carrying out this chapter, other than subchapter III of this chapter, not to exceed $23,000,000 for the fiscal year 1970, and $40,000,000 for the fiscal years 1971 and 1972.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 111 of Pub. L. 93–492 provided that: "The amendments made by this title [enacting sections 1393(a)(2), 1397(a)(2)(A)–(C), 1402, 1410a, and 1411 to 1420; amending sections 1391(10), 1397(a)(1), (b), 1398(a), 1399(a), (c), 1401(a)–(c), (e), 1408(a), 1409, and 1424(a); and repealing prior section 1402 of this title] (other than section 109) [enacting section 1410b of this title] shall take effect on the sixtieth day after the date of enactment of this Act [Oct. 27, 1974]; except that section 108(a)(4)(D) of the National Traffic and Motor Vehicle Safety Act of 1966 (as added by section 103(a)(1)(A) of this Act) [probably means section 1397(a)(1)(D) of this title] shall take effect on the date of enactment of this Act [Oct. 27, 1974]."

SHORT TITLE

Section 1 of Pub. L. 93–492 provided: "That this Act [which enacted sections 1391(14), (15), 1392(i), 1402, 1410a, 1410b, 1411 to 1420, and 1963a, amended sections 1391(10), 1393(a), 1397(a)(1), (2), (b)(1)–(3), (5), 1398(a), 1399(a), (c), 1401(a), (c), (e), 1408(a), 1409, 1424(a), 1961 (b), (c), 1962(a), and 1963, and repealed sections 1393 and 1402 of this title, and enacted provisions set out as notes under sections 1392, 1393, 1409, and 1411 of this title] may be cited as the 'Motor Vehicle and Schoolbus Safety Amendments of 1974'."

Section 1 of Pub. L. 92–548 provided: "That this Act [which amended this section and section 1410 of this title] may be cited as the 'National Traffic and Motor Vehicle Safety Act Amendments of 1972'."

**§ 1410. Exemption from safety standards of motor vehicles.**

**(a) Eligibility; procedure; criteria for temporary exemption or renewal of exemption; publication of notice of decision in Federal Register.**

Except as provided in subsection (d) of this section, upon application by a manufacturer at such time, in such manner, and containing such information as required in this section and as the Secretary shall prescribe, the Secretary may, after publication of notice and opportunity to comment and under such terms and conditions and to such extent as he deems appropriate, temporarily exempt or renew the exemption of a motor vehicle from any motor vehicle safety standard established under this subchapter if he finds—

(1)(A) that compliance would cause such manufacturer substantial economic hardship and that the manufacturer has, in good faith, attempted to comply with each standard from which it requests to be exempted,

(B) that such temporary exemption would facilitate the development or field evaluation of new motor vehicle safety features which provide a level of safety which is equivalent to or exceeds the level of safety established in each standard from which an exemption is sought,

(C) that such temporary exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably degrade the safety of such vehicle, or

(D) that requiring compliance would prevent a manufacturer from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles; and

(2) that such temporary exemption would be consistent with the public interest and the objectives of the chapter.

Notice of each decision to grant a temporary exemption and the reasons for granting it shall be published in the Federal Register.

**(b) Permanent labeling of exempted motor vehicle; contents; notification of dealer and first purchaser of exemption.**

The Secretary shall require permanent labeling of each exempted motor vehicle. Such label shall

either name or describe each of the standards from which the motor vehicle is exempted and be affixed to such exempted vehicles. The Secretary may require that written notification of the exemption be delivered to the dealer and first purchaser for purposes other than the resale of such exempted motor vehicle in such manner as he deems appropriate.

**(c) Limitation periods for exemption or renewal; reapplication for renewal.**

(1) No exemption or renewal granted under paragraph (1) (A) of subsection (a) of this section shall be granted for a period longer than three years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a) of this section.

(2) No exemption or renewal granted under paragraph (1) (B), (1) (C), or (1) (D) of subsection (a) of this section shall be granted for a period longer than two years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a) of this section.

**(d) Manufacturers eligible for exemptions.**

(1) No manufacturer whose total motor vehicle production in its most recent year of production exceeds 10,000, as determined by the Secretary, shall be eligible to apply for an exemption under paragraph (1) (A) of subsection (a) of this section.

(2) No manufacturer shall be eligible to apply for exemption under paragraph (1) (B), (1) (C), or (1) (D) of subsection (a) of this section for more than 2,500 vehicles to be sold in the United States in any 12 month period, as determined by the Secretary.

**(e) Applications for exemptions; contents.**

Any manufacturer applying for an exemption on the basis of paragraph (1) (A) of subsection (a) of this section shall include in the application a complete financial statement showing the basis of the economic hardship and a complete description of its good faith efforts to comply with the standards. Any manufacturer applying for an exemption on the basis of paragraph (1) (B) of subsection (a) of this section shall include in the application research, development, and testing documentation establishing the innovational nature of the safety features and a detailed analysis establishing that the level of safety of the new safety feature is equivalent to or exceeds the level of safety established in the standard from which the exemption is sought. Any manufacturer applying for an exemption on the basis of paragraph (1) (C) of subsection (a) of this section shall include in the application research, development, and testing documentation establishing that the safety of such vehicle is not unreasonably degraded and that such vehicle is a low-emission motor vehicle. Any manufacturer applying for an exemption on the basis of paragraph (1) (D) of subsection (a) of this section shall include in the application a detailed analysis of how the vehicle provides an overall level of safety equivalent to or exceeding the overall level of safety of nonexempted motor vehicles.

**(f) Promulgation of regulations for applications; disclosure of information contained in application.**

The Secretary shall promulgate regulations within 90 days (which time may be extended by the Secretary by a notice published in the Federal Register stating good cause therefor) after October 25, 1972, for applications for exemption from any motor vehicle safety standard provided for in this section. The Secretary may make public within 10 days of the date of filing an application under this section all information contained in such application or other information relevant thereto unless such information concerns or relates to a trade secret, or other confidential business information, not relevant to the application for exemption.

**(g) Definitions.**

For the purpose of this section, the term "low-emission motor vehicle" means any motor vehicle which—

(1) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 1857f–1 of Title 42 at the time of manufacture to that type of vehicle; and

(2) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 1857f–1 of Title 42 at the time of manufacture to that type of vehicle.

(As amended Pub. L. 92–548, § 3, Oct. 25, 1972, 86 Stat. 1159.)

REFERENCE IN TEXT

"This chapter", referred to in subsec. (a) (2), was in the original "the Act". The Act referred to was Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 817, which enacted this chapter and provisions set out as a note under section 313 of Title 23, Highways.

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–548 added provisions making certain manufacturers under subsec. (d) of this section ineligible to apply for exemptions, requiring the Secretary to follow a prescribed procedure in granting temporary exemptions or renewing exemptions, including publication in the Federal Register of notice of each temporary exemption, and expanding the criteria for determing the necessity for granting exemptions, and struck out reference to limited production motor vehicles.

Subsec. (b). Pub. L. 92–548 substituted provisions requiring the permanent labeling of each exemption motor vehicle, and provisions that the Secretary may require that written notification of the exemption be delivered to the dealer and first purchaser for purposes other than resale of such exempted motor vehicle in such manner as he deems appropriate, for provisions that the Secretary shall require, in such manner as he deems appropriate, the notification of the dealer and of the first purchaser of a limited production motor vehicle (not including the dealer of such manufacturer) that such vehicle has been exempted from certain motor vehicle safety standards, and the standards from which it is exempted.

Subsec. (c). Pub. L. 92–548 substituted provisions setting forth limitation periods for length of exemption or renewal and requirements relating to reapplication for renewal, for provisions defining the term "limited production motor vehicle".

Subsec. (d). Pub. L. 92–548 substituted provisions setting forth eligibility requirements for manufacturers seeking exemptions, for provisions terminating the authority of the Secretary to grant exemptions three years after Apr. 10, 1968, and limiting the force and effect of exemptions to three years after the date such exemption was originally granted.

Subsecs. (e)–(g). Pub. L. 92–548 added subsecs. (e)–(g).

**§ 1410a. Petitions of interested persons.**

**(a) Requests for Secretary's commencement of proceedings.**

Any interested person may file with the Secretary a petition requesting him (1) to commence a proceeding respecting the issuance of an order pursuant to section 1392 of this title or to commence a pro-

ceeding to determine whether to issue an order pursuant to section 1412(b) of this title.

**(b) Contents; factual statement; description of relief.**

Such petition shall set forth (1) facts which it is claimed establish that an order is necessary, and (2) a brief description of the substance of the order which it is claimed should be issued by the Secretary.

**(c) Public hearings or appropriate investigation or proceeding.**

The Secretary may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not such petition should be granted.

**(d) Time of determination; commencement of proceedings upon grant of petition; publication in Federal Register of reasons for denial of petition.**

Within 120 days after filing of a petition described in subsection (b) of this section, the Secretary shall either grant or deny the petition. If the Secretary grants such petition, he shall promptly commence the proceeding requested in the petition. If the Secretary denies such petition he shall publish in the Federal Register his reasons for such denial.

**(e) Additional remedies.**

The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law. (Pub. L. 89–563, title I, § 124, as added Pub. L. 93–492, title I, § 106, Oct. 27, 1974, 88 Stat. 1481.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

**§ 1410b. Occupant restraint systems.**

**(a) Amendment of Federal motor vehicle safety standard numbered 208; effective date.**

Not later than 60 days after October 27, 1974, the Secretary shall amend the Federal motor vehicle safety standard numbered 208 (49 CFR 571.208), so as to bring such standard into conformity with the requirements of paragraphs (1), (2), and (3) of subsection (b) of this section. Such amendment shall take effect not later than 120 days after October 27, 1974.

**(b) Federal motor vehicle safety standard requirements.**

After the effective date of the amendment prescribed under subsection (a) of this section:

(1) No Federal motor vehicle safety standard may—

(A) have the effect of requiring, or

(B) provide that a manufacturer is permitted to comply with such standard by means of,

any continuous buzzer designed to indicate that safety belts are not in use, or any safety belt interlock system.

(2) Except as otherwise provided in paragraph (3), no Federal motor vehicle safety standard respecting occupant restraint systems may—

(A) have the effect of requiring, or

(B) provide that a manufacturer is permitted to comply with such standard by means of,

an occupant restraint system other than a belt system.

(3)(A) Paragraph (2) shall not apply to a Federal motor vehicle safety standard which provides that a manufacturer is permitted to comply with such standard by equipping motor vehicles manufactured by him with either—

(i) a belt system, or

(ii) any other occupant restraint system specified in such standard.

(B) Paragraph (2) shall not apply to any Federal motor vehicle safety standard which the Secretary elects to promulgate in accordance with the procedure specified in subsection (c) of this section, unless it is disapproved by both Houses of Congress by concurrent resolution in accordance with subsection (d) of this section.

(C) Paragraph (2) shall not apply to a Federal motor vehicle safety standard if at the time of promulgation of such standard (i) the 60-day period determined under subsection (d) of this section has expired with respect to any previously promulgated standard which the Secretary has elected to promulgate in accordance with subsection (c) of this section, and (ii) both Houses of Congress have not by concurrent resolution within such period disapproved such previously promulgated standard.

**(c) Federal motor vehicle safety standard promulgation procedure; rule making requirement; data, views or arguments: presentation opportunity; transcript; notification of Congressional Committees; data, views, or arguments of Members of Congress; transmittal of standard to Congress and Congressional Committees.**

The procedure referred to in subsection (b)(3)(B) and (C) of this section in accordance with which the Secretary may elect to promulgate a standard is as follows:

(1) The standard shall be promulgated in accordance with section 1392 of this title, subject to the other provisions of this subsection.

(2) Section 553 of Title 5 shall apply to such standard; except that the Secretary shall afford interested persons an opportunity for oral as well as written presentation of data, views, or arguments. A transcript shall be kept of any oral presentation.

(3) The chairman and ranking minority members of the House Interstate and Foreign Commerce Committee and the Senate Commerce Committee shall be notified in writing of any proposed standard to which this section applies. Any Member of Congress may make an oral presentation of data, views, or arguments under paragraph (2).

(4) Any standard promulgated pursuant to this subsection shall be transmitted to both Houses of Congress, on the same day and to each House while it is in session. In addition, such standard shall be transmitted to the chairmen and ranking minority members of the committees referred to in paragraph (3).

**(d) Concurrent resolution of disapproval during prescribed period; Federal motor vehicle safety standard effective upon expiration of such period.**

(1) A standard which the Secretary has elected to promulgate in accordance with subsection (c) of this section shall not be effective if, during the first period of 60 calendar days of continuous session of Congress after the date of transmittal to Congress, both Houses of Congress pass a concurrent resolu-

tion the matter after the resolving clause of which reads as follows: "The Congress disapproves the Federal motor vehicle safety standard transmitted to Congress on ————, 19—."; (the blank space being filled with date of transmittal of the standard to Congress). If both Houses do not pass such a resolution during such period, such standard shall not be effective until the expiration of such period (unless the standard specifies a later date).

(2) For purposes of this section—

(A) continuity of session of Congress is broken only by an adjournment sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

**(e) Judicial review of Federal motor vehicle safety standard.**

This section shall not impair any right which any person may have to obtain judicial review of a Federal motor vehicle safety standard.

**(f) Definitions.**

For purposes of this section:

(1) The term "safety belt interlock" means any system designed to prevent starting or operation of a motor vehicle if one or more occupants of such vehicle are not using safety belts.

(2) The term "belt system" means an occupant restraint system consisting of integrated lap and shoulder belts for front outboard occupants and lap belts for other occupants. With respect to (A) motor vehicles other than passenger vehicles, (B) convertibles, and (C) open-body type vehicles, such term also includes an occupant restraint system consisting of lap belts or lap belts combined with detachable shoulder belts.

(3) The term "occupant restraint system" means a system the principal purpose of which is to assure that occupants of a motor vehicle remain in their seats in the event of a collision or rollover. Such term does not include a warning device designed to indicate that seat belts are not in use.

(4) The term "continuous buzzer" means a buzzer other than a buzzer which operates only during the 8 second period after the ignition is turned to the "start" or "on" position.

(Pub. L. 89–563, title I, § 125, as added Pub. L. 93–492, title I, § 109, Oct. 27, 1974, 88 Stat. 1482.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1397 of this title.

## PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS [NEW]

AMENDMENTS

1974—Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1470 added heading "Part B—Discovery, Notification, and Remedy of Motor Vehicle Defects".

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1397 of this title.

### § 1411. Notification respecting manufacturer's finding of defect or failure to comply.

If a manufacturer—

(1) obtains knowledge that any motor vehicle or item of replacement equipment manufactured by him contains a defect and determines in good faith that such defect relates to motor vehicle safety; or

(2) determines in good faith that such vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 1392 of this title;

he shall furnish notification to the Secretary and to owners, purchasers, and dealers, in accordance with section 1413 of this title, and he shall remedy the defect or failure to comply in accordance with section 1414 of this title. (Pub. L. 89–563, title I, § 151, as added Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1470.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SAVINGS PROVISION

Section 102(c) of Pub. L. 93–492 provided that: "The amendments made by this section [enacting this part, amending section 1399(c) and repealing section 1402 of this title] shall not apply to any defect or failure to comply with respect to which, before the effective date of this title [see note under section 1409 of this title], notification was issued under section 113(a) of such Act [former section 1402(a) of this title] or was required to be issued under section 113(e) [former section 1402(e) of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1399, 1413, 1414, 1416 of this title.

### § 1412. Notification respecting Secretary's finding of defect or failure to comply; publication in Federal Register; data, views, and arguments; presentation opportunity.

(a) If through testing, inspection, investigation, or research carried out pursuant to this chapter, or examination of communications under section 1418(a)(1) of this title, or otherwise, the Secretary determines that any motor vehicle or item of replacement equipment—

(1) does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 1392 of this title; or

(2) contains a defect which relates to motor vehicle safety;

he shall immediately notify the manufacturer of such motor vehicle or item of replacement equipment of such determination, and shall publish notice of such determination in the Federal Register. The notification to the manufacturer shall include all information upon which the determination of the Secretary is based. Such notification (including such information) shall be available to any interested person, subject to section 1418(a)(2)(B) of this title. The Secretary shall afford such manufacturer an opportunity to present data, views, and arguments to establish that there is no defect or failure to comply or that the alleged defect does not affect motor vehicle safety; and shall afford other interested persons an opportunity to present data, views, and arguments respecting the determination of the Secretary.

(b) If, after such presentations by the manufacturer and interested persons, the Secretary determines that such vehicle or item of replacement equipment does not comply with an applicable Federal

motor vehicle safety standard, or contains a defect which relates to motor vehicle safety, the Secretary shall order the manufacturer (1) to furnish notification respecting such vehicle or item of replacement equipment to owners, purchasers, and dealers in accordance with section 1413 of this title, and (2) to remedy such defect or failure to comply in accordance with section 1414 of this title. (Pub. L. 89–563, title I, § 152, as added Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1470.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (a), was in the original "this Act" meaning Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 718, which enacted this chapter and provisions set out as a note under section 313 of Title 23, Highways.

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1399, 1410a, 1413, 1414, 1415, 1416, 1418 of this title.

**§ 1413. Notice; contents, time, and form.**

(a) The notification required by section 1411 or 1412 of this title respecting a defect in or failure to comply of a motor vehicle or item of replacement equipment shall contain, in addition to such other matters as the Secretary may prescribe by regulation—

(1) a clear description of such defect or failure to comply;

(2) an evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply;

(3) a statement of the measures to be taken to obtain remedy of such defect or failure to comply;

(4) a statement that the maufacturer furnishing the notification will cause such defect or failure to comply to be remedied without charge pursuant to section 1414 of this title;

(5) the earliest date (specified in accordance with the second and third sentences of section 1414(b)(2) of this title) on which such defect or failure to comply will be remedied without charge and, in the case of tires, the period during which such defect or failure to comply will be remedied without charge pursuant to section 1414 of this title; and

(6) a description of the procedure to be followed by the recipient of the notification in informing the Secretary whenever a manufacturer, distributor, or dealer fails or is unable to remedy without charge such defect or failure to comply.

(b) The notification required by section 1411 or 1412 of this title shall be furnished—

(1) within a reasonable time after the manufacturer first makes a determination with respect to a defect or failure to comply under section 1411 of this title; or

(2) within a reasonable time (prescribed by the Secretary) after the manufacturer's receipt of notice of the Secretary's determination pursuant to section 1412 of this title that there is a defect or failure to comply.

(c) The notification required by section 1411 or 1412 of this title with respect to a motor vehicle or item of replacement equipment shall be accomplished—

(1) in the case of a motor vehicle, by first class mail to each person who is registered under State law as the owner of such vehicle and whose name and address is reasonably ascertainable by the manufacturer through State records or other sources available to him;

(2) in the case of a motor vehicle, or tire, by first class mail to the first purchaser (or if a more recent purchaser is known to the manufacturer, to the most recent purchaser known to the manufacturer) of each such vehicle or tire containing such defect or failure to comply, unless the registered owner (if any) of such vehicle was notified under paragraph (1);

(3) in the case of an item of replacement equipment (other than a tire), (A) by first class mail to the most recent purchaser known to the manufacturer; and (B) if the Secretary determines that it is necessary in the interest of motor vehicle safety, by public notice in such manner as the Secretary may order after consultation with the manufacturer;

(4) by certified mail or other more expeditious means to the dealer or dealers of such manufacturer to whom such motor vehicle or replacement equipment was delivered; and

(5) by certified mail to the Secretary, if section 1411 of this title applies.

In the case of a tire which contains a defect or failure to comply (or of a motor vehicle on which such tire was installed as original equipment), the manufacturer who is required to provide notification under paragraph (1) or (2) may elect to provide such notification by certified mail. (Pub. L. 89–563, title I, § 153, as added Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1471.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section III of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1412, 1414, 1415 of this title.

**§ 1414. Remedy of defect or failure to comply; publication in Federal Register; program filed with Secretary: notice of availability, publication in Federal Register.**

(a)(1) If notification is required under section 1411 of this title or by an order under section 1412(b) of this title, with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, then the manufacturer of each such motor vehicle or item of replacement equipment presented for remedy pursuant to such notification shall cause such defect or failure to comply in such motor vehicle or such item of replacement equipment to be remedied without charge. In the case of notification required by an order under section 1412(b) of this title, the preceding sentence shall not apply during any period during which enforcement of the order has been restrained in an action to which section 1415(a) of this title applies or if such order has been set aside in such an action.

(2)(A) In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer (subject to subsection (b) of this section) shall cause the vehicle to be remedied by whichever of the following means he elects:

(i) By repairing such vehicle.

(ii) By replacing such motor vehicle without charge, with an identical or reasonably equivalent vehicle.

(iii) By refunding the purchase price of such motor vehicle in full, less a reasonable allowance for depreciation.

Replacement or refund may be subject to such conditions imposed by the manufacturer as the Secretary may permit by regulation.

(B) In the case of an item of replacement equipment the manufacturer shall (at his election) cause either the repair of such item of replacement equipment, or the replacement of such item of replacement equipment without charge with an identical or reasonably equivalent item of replacement equipment.

(3) The dealer who effects remedy pursuant to this section without charge shall receive fair and equitable reimbursement for such remedy from the manufacturer.

(4) The requirement of this section that remedy be provided without charge shall not apply if the motor vehicle or item of replacement equipment was purchased by the first purchaser more than 8 calendar years (3 calendar years in the case of a tire, including an original equipment tire) before (A) notification respecting the defect or failure to comply is furnished pursuant to section 1411 of this title, or (B) the Secretary orders such notification under section 1412 of this title, whichever is earlier.

(5)(A) The manufacturer of a tire (including an original equipment tire) presented for remedy by an owner or purchaser pursuant to notification under section 1413 of this title shall not be obligated to remedy such tire if such tire is not presented for remedy during the 60-day period beginning on the later of (i) the date on which the owner or purchaser received such notification or (ii) if the manufacturer elects replacement, the date on which the owner or purchaser received notice that a replacment tire is available.

(B) If the manufacturer elects replacement and if a replacement tire is not in fact available during the 60-day period, then the limitation under subparagraph (A) on the manufacturer's remedy obligation shall be applicable only if the manufacturer provides a notification (subsequent to the notification provided under subparagraph (A)(ii)) that replacement tires are to be available during a later 60-day period (beginning after such subsequent notification), and in that case the manufacturer's obligation shall be limited to tires presented for remedy during the later 60-day period if the tires are in fact available during that period.

(b)(1) Whenever a manufacturer has elected under subsection (a) of this section to cause the repair of a defect in a motor vehicle or item of replacement equipment or of a failure of such vehicle or item of replacement equipment to comply with a motor vehicle safety standard, and he has failed to cause such defect or failure to comply to be adequately repaired within a reasonable time, then (A) he shall cause the motor vehicle or item of replacement equipment to be replaced with an identical or reasonably equivalent vehicle or item of replacement equipment without charge, or (B) (in the case of a motor vehicle and if the manufacturer so elects) he shall cause the purchase price to be refunded in full, less a reasonable allowance for depreciation. Failure to adequately repair a motor vehicle or item of replacement equipment within 60 days after tender of the motor vehicle or item of replacement equipment for repair shall be prima facie evidence of failure to repair within a reasonable time; unless prior to the expiration of such 60-day period the Secretary, by order, extends such 60-day period for good cause shown and published in the Federal Register.

(2) For purposes of this subsection, the term "tender" does not include presenting a motor vehicle or item of replacement equipment for repair prior to the earliest date specified in the notification pursuant to section 1413(a) of this title on which such defect or failure to comply will be remedied without charge, or (if notification was not afforded pursuant to section 1413(a) of this title) prior to the date specified in any notice required to be given under section 1415(d) of this title. In either case, such date shall be specified by the manufacturer and shall be the earliest date on which parts and facilities can reasonably be expected to be available. Such date shall be subject to disapproval by the Secretary.

(c) The manufacturer shall file with the Secretary a copy of his program pursuant to this section for remedying any defect or failure to comply, and the Secretary shall make the program available to the public. Notice of such availability shall be published in the Federal Register. (Pub. L. 89–563, title I, § 154, as added Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1472.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1412, 1413, 1415, 1416 of this title.

**§ 1415. Enforcement of notification and remedy orders.**

**(a) Civil actions; venue; change of venue; consolidation; expedition of proceedings.**

(1) An action under section 1399(a) of this title to restrain a violation of an order issued under section 1412(b) of this title, or under section 1398 of this title to collect a civil penalty with respect to a violation of such an order, or any other civil action with respect to such an order, may be brought only in the United States district court for the District of Columbia or the United States district court for a judicial district in the State of incorporation (if any) of the manufacturer to which the order applies; unless on motion of any party the court orders a change of venue to any other district court for good cause shown. All actions (including enforcement actions) brought with respect to the same order under section 1412(b) of this title shall be consolidated in an action in a single judicial district, in accordance with an order of the court in which the first such

action is brought (or if such first action is transferred to another court, by order of such other court).

(2) The court shall expedite the disposition of any civil action to which this subsection applies.

**(b) Notification contents; liability of manufacturer.**

If a civil action which relates to an order under section 1412(b) of this title, and to which subsection (a) of this section applies, has been commenced the Secretary may order the manufacturer to issue a provisional notification which shall contain—

(A) a statement that the Secretary has determined that a defect which relates to motor vehicle safety, or failure to comply with a Federal motor vehicle safety standard, exists, and that the manufacturer is contesting such determination in a proceeding in a United States district court,

(B) a clear description of the Secretary's stated basis for his determination that there is such a defect or failure,

(C) the Secretary's evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply,

(D) any measures which in the judgment of the Secretary are necessary to avoid an unreasonable hazard resulting from the defect or failure to comply,

(E) a statement that the manufacturer will cause such defect or failure to comply to be remedied without charge pursuant to section 1414 of this title, but that this obligation of the manufacturer is conditioned on the outcome of the court proceeding, and

(F) such other matters as the Secretary may prescribe by regulation or in such order.

Issuance of notification under this subsection does not relieve the manufacturer of any liability for failing to issue notification required by an order under section 1412(b) of this title.

**(c) Civil actions for nonnotification of owners or purchasers; liability of manufacturer.**

(1) If a manufacturer fails to notify owners or purchasers in accordance with section 1413(c) of this title within the period specified under section 1413(b) of this title, the court may hold him liable for a civil penalty with respect to such failure to notify, unless the manufacturer prevails in an action described in subsection (a) of this section or unless the court in such an action restrains the enforcement of such order (in which case he shall not be liable with respect to any period for which the effectiveness of the order was stayed). The court shall restrain the enforcement of such an order only if it determines, (A) that the failure to furnish notification is reasonable, and (B) that the manufacturer has demonstrated that he is likely to prevail on the merits.

(2) If a manufacturer fails to notify owners or purchasers as required by an order under subsection (b) of this section, the court may hold him liable for a civil penalty without regard to whether or not he prevails in an action (to which subsection (a) of the section applies) with respect to the validity of the order issued under section 1412(b) of this title.

**(d) Orders of Secretary against manufacturer; conditions for issuance.**

If (i) a manufacturer fails within the period specified in section 1413(b) of this title to comply with an order under section 1412(b) of this title to afford notification to owners and purchasers, (ii) a civil action to which subsection (a) of this section applies is commenced with respect to such order, and (iii) the Secretary prevails in such action, then the Secretary shall order the manufacturer—

(1) to afford notice (which notice may be combined with any notice required by an order under section 1412(b) of this title) to each owner, purchaser, and dealer described in section 1413(c) of this title of the outcome of the proceeding and containing such other information as the Secretary may require;

(2) to specify (in accordance with the second and third sentences of section 1414(b)[1] of this title) the earliest date on which such defect or failure will be remedied without charge; and

(3) if notification was required under subsection (b) of this section, to reimburse such owner or purchaser for any reasonable and necessary expenses (not in excess of any amount specified in the order of the Secretary) which are incurred (A) by such owner or purchaser; (B) for the purpose of repairing the defect or failure to comply to which the order relates; and (C) during the period beginning on the date such notification under subsection (b) of this section was required to be issued and ending on the date such owner or purchaser receives notification pursuant to this subsection.

(Pub. L. 89–563, title I, § 155, as added Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1474.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1399, 1414 of this title.

**§ 1416. Reasonableness of notification and remedy; hearing.**

Upon petition of any interested person or on his own motion, the Secretary may hold a hearing in which any interested person (including a manufacturer) may make oral (as well as written) presentations of data, views, and arguments on the question of whether a manufacturer has reasonably met his obligation to notify under section 1411 or 1412 of this title, and to remedy a defect or failure to comply under section 1414 of this title. If the Secretary determines the manufacturer has not reasonably met such obligation, he shall order the manufacturer to take specified action to comply with such obligation; and, in addition, the Secretary may take any other action authorized by this subchapter. (Pub. L. 89–563, title I, § 156, as added Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1475.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

[1] So in original. Probably should be section "1414(b)(2)".

**§ 1417. Exemption for inconsequential defect or failure to comply; notice in Federal Register; data, views, and arguments: presentation opportunity.**

Upon application of a manufacturer, the Secretary shall exempt such manufacturer from any requirement under this part to give notice with respect to, or to remedy, a defect or failure to comply, if he determines, after notice in the Federal Register and opportunity for interested persons to present data, views, and arguments, that such defect or failure to comply is inconsequential as it relates to motor vehicle safety. (Pub. L. 89–563, title I, § 157, as added Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1475.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

**§ 1418. Information, disclosure, and recordkeeping; confidential information.**

(a)(1) Every manufacturer shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the dealers of such manufacturer or to owners or purchasers of motor vehicle or replacement equipment produced by such manufacturer regarding any defect or failure to comply in such vehicle or equipment which is sold or serviced.

(2)(A) Except as provided in subparagraph (B), the Secretary shall disclose to the public so much of any information which is obtained under this chapter and which relates to a defect which relates to motor vehicle safety or to a failure to comply with an applicable Federal motor vehicle safety standard, as he determines will assist in carrying out the purposes of this part or as may be required by section 1412 of this title.

(B) Any information described in subparagraph (A) which contains or relates to a trade secret or other matter referred to in section 1905 of Title 18 shall be considered confidential for purposes of that section and shall not be disclosed; unless the Secretary determines that disclosure of such information is necessary to carry out the purposes of this subchapter.

(C) Any obligation to disclose information under this paragraph shall be in addition to and not in lieu of the requirements of section 552 of Title 5.

(b) Every manufacturer of motor vehicles or tires shall cause the establishment and maintenance of records of the name and address of the first purchaser of each motor vehicle and tire produced by such manufacturer. To the extent required by regulations of the Secretary, every manufacturer of motor vehicles or tires shall cause the establishment and maintenance of records of the name and address of the first purchaser of each item of replacement equipment other than a tire produced by such manufacturer. The Secretary may, by rule, specify the records to be established and maintained, and reasonable procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this subsection; except that the availability or not of such assistance shall not affect the obligation of manufacturers under this subsection. Such procedures shall be reasonable for the particular type of motor vehicle or tires for which they are prescribed, and shall provide reasonable assurance that customer lists of any dealer and distributor, and similar information, will not be made available to any person other than the dealer or distributor, except where necessary to carry out the purpose of this part. (Pub. L. 89–563, title I, § 158, as added Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1475.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (a)(2)(A), was in the original "this Act" meaning Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 718, which enacted this chapter and provisions set out as a note under section 313 of Title 23, Highways.

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1412 of this title.

**§ 1419. Definitions.**

For purposes of this part:

(1) The retreader of tires shall be deemed the manufacturer of tires which have been retreaded, and the brand name owner of tires marketed under a brand name not owned by the manufacturer of the tire shall be deemed the manufacturer of tires marketed under such brand name.

(2) Except as otherwise provided in regulations of the Secretary:

(A) The term "original equipment" means an item of motor vehicle equipment (including a tire) which was installed in or on a motor vehicle at the time of its delivery to the first purchaser.

(B) The term "replacement equipment" means motor vehicle equipment (including a tire) other than original equipment.

(C) A defect in, or failure to comply of, an item of original equipment shall be deemed to be a defect in, or failure to comply of, the motor vehicle in or on which such equipment was installed at the time of its delivery to the first purchaser.

(D) If the manufacturer of a motor vehicle is not the manufacturer of original equipment installed in or on such vehicle at the time of its delivery to the first purchaser, the manufacturer of the vehicle (rather than the manufacturer of such equipment) shall be considered the manufacturer of such item of equipment.

(3) The term "first purchaser" means first purchaser for purposes other than resale.

(4) The term "adequate repair" does not include any repair which results in substantially impaired operation of a motor vehicle or item of replacement equipment.

(Pub. L. 89–563, title I, § 159, as added Pub. L. 93–492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1476.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

**§ 1420. Effect on other laws.**

The provisions of this part shall not create or affect any warranty obligation under State or Federal law. Consumer remedies under this part are in addition to, and not in lieu of, any other right or remedy under State or Federal law. (Pub. L. 89–563, title I, § 160, as added Pub. L. 93–492, title I, § 102 (a), Oct. 27, 1974, 88 Stat. 1477.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

## SUBCHAPTER II.—TIRE SAFETY

**§ 1424. Regrooved tires.**

(a) No person shall sell, offer for sale, or introduction [1] for sale, or deliver for introduction in interstate commerce, any tire or motor vehicle equipped with any tire which has been regrooved, except that the Secretary may by order permit the sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of regrooved tires and motor vehicles equipped with regrooved tires which he finds are designed and constructed in a manner consistent with the purposes of this chapter.

* * * * *

(As amended Pub. L. 93–492, title I, § 110(c), Oct. 27, 1974, 88 Stat. 1484.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (a), was in the original "this Act" meaning Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 718, which enacted this chapter and provisions set out as a note under section 313 of Title 23, Highways.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–492 substituted "introduction for sale, or" for "introduce for sale or" and "sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of regrooved tires" for "sale of regrooved tires".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment Pub. L. 93–492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93–492, set out as a note under section 1409 of this title.

## Chapter 39.—FAIR PACKAGING AND LABELING PROGRAM

**§ 1457. Annual reports to Congress; submission dates.**

Each officer or agency required or authorized by this chapter to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 1454 (d) of this title, shall transmit to the Congress each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this chapter during the preceding fiscal year. All agencies except the Federal Trade Commission shall submit their report in January of each year. The Federal Trade Commission shall include this report in the Commission's annual report to Congress. (As amended Pub. L. 93–608, § 3(2), Jan. 2, 1975, 88 Stat. 1972.)

[1] So in original.

AMENDMENTS

1975—Pub. L. 93–608 added provision relating to submission of required report by the Federal Trade Commission with the annual report of the Commission to the Congress.

## Chapter 39A.—SPECIAL PACKAGING OF HOUSEHOLD SUBSTANCES FOR PROTECTION OF CHILDREN

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2079 of this title; title 7 section 136w.

**§ 1471. Definitions.**

For the purpose of this Act—

* * * * *

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

* * * * *

(B) a pesticide as that term is defined in section 136(u) of Title 7;

* * * * *

(As amended Pub. L. 92–516, § 3(2), Oct. 21, 1972, 86 Stat. 998.)

CODIFICATION

The substitution of "a pesticide" for "an economic poison" by Pub. L. 92–516 fails to reflect amendment of Federal Insecticide, Fungicide, and Rodenticide Act by Pub. L. 92–516. Such amendment defines the term "pesticide" in section 136(u) of Title 7, Agriculture, and not in section 135(a) of Title 7. Reference therefore, to section 136(u) of Title 7 has been substituted for reference to section 135(a) of Title 7 as the probable intent of Congress.

AMENDMENTS

1972—Par. (2)(B). Pub. L. 92–516 substituted "a pesticide" for "an economic poison".

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–516 effective at the close of Oct. 21, 1972, except if regulations are necessary for the implementation of any provision that becomes effective on Oct. 21, 1972, and continuation in effect of subchapter I of chapter 6 of Title 7, and regulations thereunder, relating to the control of economic poisons, as in existence prior to Oct. 21, 1972, until superseded by provisions of Pub. L. 92–516 and regulations thereunder, see section 4 of Pub. L. 92–516, set out as a note under section 136 of Title 7, Agriculture.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

**§§ 1472 to 1476.**

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

## Chapter 40.—DEPARTMENT OF COMMERCE

**§ 1511. Bureaus in Department.**

The following named bureaus, administrations, services, offices, and programs of the public service, and all that pertains thereto, shall be under the jurisdiction and subject to the control of the Secretary of Commerce:

(a) National Oceanic and Atmospheric Administration;

(b) United States Travel Service;
(c) Maritime Administration;
(d) National Bureau of Standards;
(e) Patent and Trademark Office;
(f) Bureau of the Census;
(g) National Fire Prevention and Control Administration; and
(h) such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law. (As amended Oct. 29, 1974, Pub. L. 93–498, § 23, 88 Stat. 1549; Jan. 2, 1975, Pub. L. 93–596, § 3, 88 Stat. 1949.)

AMENDMENTS

1974—Pub. L. 93–498 substituted reference to Secretary of Commerce for Department of Commerce, substituted letters for numbers in the designation for enumerated bodies, and in such enumeration substituted reference to National Oceanic and Atmospheric Administration, United States Travel Service, Maritime Administration, National Bureau of Standards, Patent Office, Bureau of the Census, National Fire Prevention and Control Administration and such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law, for reference to The Bureau of Foreign and Domestic Commerce, The Bureau of Public Roads, The Civil Aeronautics Authority, The Bureau of the Census, The Coast and Geodetic Survey, The Federal Maritime Board, The Inland Waterways Corporation, The Maritime Administration, The National Bureau of Standards, The Patent Office and The Weather Bureau.

CHANGE OF NAME

"Patent and Trademark Office" substituted for "Patent Office", in accordance with section 3 of Pub. L. 93–596, set out as a note under section 1 of Title 35, Patents.

In order to implement the provisions of Reorganization Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, which covers the administration of the National Oceanic and Atmospheric Administration, were changed by order of the Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, as follows: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey; and Weather Bureau to National Weather Service.

REORG. PLAN NO. 4 OF 1970

The effective date of Reorg. Plan No. 4 of 1970, set out as a note under this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

EXECUTIVE ORDER NO. 11567

Ex. Ord. No. 11567, Nov. 16, 1970, 35 F.R. 17701, set out as a note under this section, which prescribed the compensation of the Director and Deputy Director of the Bureau of Domestic Commerce, was superseded by Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, set out as a note under this section.

EX. ORD. NO. 11759. COMPENSATION OF CERTAIN OFFICIALS IN DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, provided:

By virtue of the authority vested in me by section 703(a) of the Defense Production Act of 1950, as amended (50 US.C. App. 2153(a)), and as President of the United States, it is ordered as follows:

SECTION 1. The compensation for the position of Deputy Assistant Secretary for Domestic and International Business, Department of Commerce, is hereby fixed at the rate now or hereafter prescribed by law for level V of the Executive Schedule (5 U.S.C. 5316).

SEC. 2. The compensation for the position of Deputy Assistant Secretary for Domestic Commerce, Department of Commerce, is hereby fixed at the highest rate now or hereafter prescribed by law for grade 18 of the General Schedule (5 U.S.C. 5332).

SEC. 3. Executive Order No. 11567 of November 16, 1970, is hereby superseded.

RICHARD NIXON.

### § 1513. Duties and powers vested in Department.

FOREIGN INVESTMENT IN THE UNITED STATES

For functions of the Secretary of Commerce respecting the collection and use of data on foreign investment in the United States, see Sec. 2 of Ex. Ord. No. 11858, May 7, 1975, 40 F.R. 20263, set out as a note under section 2841 of Title 22, Foreign Relations and Intercourse.

### § 1514. Basic authority for performance of certain functions and activities of Department.

Appropriations are authorized for the following activities of the Department of Commerce:

* * * * *

(b) when deemed necessary by the Secretary of Commerce, purchasing, transporting, storing, and distributing food and other subsistance supplies for resale to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities or supplies are not available and upon request of the service concerned), and their dependents, in Alaska and other points outside the continental United States at a reasonable value as determined by the Secretary of Commerce, the proceeds from such resales to be credited to the appropriation from which the expenditure was made;

* * * * *

(As amended Jan. 2, 1975, Pub. L. 93–608, § 1(3), 88 Stat. 1967.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 93–608 struck out proviso requiring an annual report to Congress of the total expenditures made for such supplies and total proceeds from resales.

## Chapter 41.—CONSUMER CREDIT PROTECTION

### SUBCHAPTER I.—CONSUMER CREDIT COST DISCLOSURE

PART A.—GENERAL PROVISIONS

Sec.
1614. Liability of assignees [New].

PART B.—CREDIT TRANSACTIONS

1645. Business credit cards; limits on liability of employees [New].

PART C.—CREDIT ADVERTISING

1665a. More-than-four-installment rule for advertisements [New].

PART D.—CREDIT BILLING [NEW]

1666. Correction of billing errors.
(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor.
(b) Billing error.
(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error.
(d) Restricting or closing by creditor of account regarded by obligor to contain a billing error.
(e) Effect of noncompliance with requirements by creditor.
1666a. Regulation of credit reports.
(a) Reports by creditor on obligor's failure to pay amount regarded as billing error.

Sec.
1666a. Regulation of credit reports—Continued
(b) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency.
(c) Reports by creditor of subsequent resolution of delinquent amounts.
1666b. Length of billing period in credit statement for imposition of finance charge; effect of failure of timely mailing or delivery of statement.
1666c. Prompt crediting of payments; imposition of finance charge.
1666d. Refunding or crediting of excess payments of obligor.
1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor.
1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; finance charge for sales transactions involving cash discounts.
1666g. Tie-in services prohibited for issuance of credit card.
1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law not affected.
1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses.
1666j. Applicability of State laws; exemptions by Board from credit billing requirements.

SUBCHAPTER IV.—EQUAL CREDIT OPPORTUNITY [NEW]

1691. Prohibited activities.
1691a. Definitions; rules of construction.
1691b. Regulations.
1691c. Administrative enforcement.
(a) Enforcing agencies.
(b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional agency powers.
(c) Overall enforcement authority of Federal Trade Commission.
(d) Rules and regulations by enforcing agencies.
1691d. Applicability of other laws.
(a) Requests for signature of husband and wife for creation of valid lien, etc.
(b) State property laws affecting creditworthiness.
(c) State laws prohibiting separate extension of consumer credit to husband and wife.
(d) Combining credit accounts of husband and wife with same creditor to determine permissible finance charges or loan ceilings under Federal or State laws.
(e) Remedies under subchapter in lieu of remedies under State or local laws for discrimination.
1691e. Civil liability.
(a) Individual or class action for actual damages.
(b) Recovery of punitive damages in individual action for actual damages; maximum amount of punitive damages.
(c) Recovery of punitive damages in class action; maximum amount of punitive damages; factors determining amount of award.
(d) Action for preventive relief.
(e) Recovery of costs and attorney fees.
(f) Good faith complaince with rule, regulation, or interpretation of Board.
(g) Jurisdiction of courts; time for maintenance of action.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 12 section 2610.

## SUBCHAPTER I.—CONSUMER CREDIT COST DISCLOSURE

SUBCHAPTER REFERRED TO IN D.C. CODE

This subchapter is referred to in sections 28–3308, 28–3603, 28–3815 of the District of Columbia Code.

### PART A.—GENERAL PROVISIONS

**§ 1601. Congressional findings and declaration of purpose.**

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices. (As amended Pub. L. 93–495, title III, § 302, Oct. 28, 1974, 88 Stat. 1511.)

AMENDMENTS

1974—Pub. L. 93–495 added provisions expanding purposes of subchapter to include protection of consumer against inaccurate and unfair credit billing and credit card practices.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

SHORT TITLE

Section 301 of Pub. L. 93–495 provided that: "This title [which enacted sections 1666 to 1666j of this title, amended this section and sections 1602, 1610, 1631, 1632, and 1637 of this title, and enacted provision set out as a note under section 1666 of this title] may be cited as the 'Fair Credit Billing Act'."

NATIONAL COMMISSION ON CONSUMER FINANCE

Title IV, §§ 401–407, of Pub. L. 90–321, as amended by Pub. L. 91–344, July 20, 1970, 84 Stat. 440; Pub. L. 92–321, June 30, 1972, 86 Stat. 382, provided that:

* * * * * * *

"§ 404. Duties of the Commission

* * * * * * *

"(b) The Commission may make interim reports and shall make a final report of its findings, recommendations, and conclusions to the President and to the Congress by December 31, 1972.

* * * * * * *

"§ 406. Administrative arrangements

* * * * * * *

"(e) After submission of its final report, as provided in section 404(b), the Commission shall cease to exist.

"§ 407. Authorization of appropriations

"There are authorized to be appropriated such sums not in excess of $2,000,000 as may be necessary to carry out the provisions of this title. Any money so appropriated shall remain available to the Commission until the date of its expiration, as fixed by section 406(e)."

**§ 1602. Definitions and rules of construction.**

* * * * * * *

(f) The term "creditor" refers only to creditors who regularly extend, or arrange for the extension

of, credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise. For the purposes of the requirements imposed under Part D of this subchapter and sections 1637(a)(6), 1637(a)(7), 1637(a)(8), 1637(b)(1), 1637(b)(2), 1637(b)(3), 1637(b)(9), and 1637(b)(11) of this title, the term creditor shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open end credit plans. The provisions of this subchapter apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

* * * * *

(As amended Pub. L. 93–495, title III, § 303, Oct. 28, 1974, 88 Stat. 1511.)

AMENDMENTS

1974—Subsec. (f). Pub. L. 93–495 added provision requiring the credit to be payable by agreement in more than four installments and defining the term "creditor" for the purposes of the requirements imposed under the enumerated sections of this chapter.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 1735f–5, 2602, 2605; title 42 section 5511.

**§ 1603. Exempted transactions.**

This subchapter does not apply to the following:

* * * * *

(5) Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $25,000.

(As amended Pub. L. 93–495, title IV, § 402, Oct. 28, 1974, 88 Stat. 1517.)

AMENDMENTS

1974—Par. (5). Pub. L. 93–495 added par. (5).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title.

**§ 1605. Determination of finance charge.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1666f of title.

**§ 1607. Administrative enforcement.**

**(a) Enforcing agencies.**

Compliance with the requirements imposed under this subchapter shall be enforced under

* * * * *

(4) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

* * * * *

(As amended Pub. L. 93–495, title IV, § 403, Oct. 28, 1974, 88 Stat. 1517.)

REFERENCES IN TEXT

The Federal Aviation Act of 1958, referred to in subsec. (a)(4), is Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 737, which is classified to section 1301 et seq. of Title 49, Transportation.

The Packers and Stockyards Act, 1921, referred to in subsec. (a)(5), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to section 181 et seq. of Title 7, Agriculture. Section 406 of the Act is classified to sections 226 and 227 of Title 7.

The Farm Credit Act of 1971, referred to in subsec. (a)(6), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to section 2001 et seq. of Title 12, Banks and Banking.

AMENDMENTS

1974—Subsec. (a)(4). Pub. L. 93–495, § 403(a), redesignated former subsec. (a)(5) as (a)(4). Former subsec. (a)(4), which related to enforcement by the Interstate Commerce Commission, was struck out.

Subsec. (a)(5). Pub. L. 93–495, § 403(a), redesignated former subsec. (a)(6) as (a)(5). Former subsec. (a)(5) redesignated (a)(4).

Subsec. (a)(6). Pub. L. 93–495, § 403(a), (b), added subsec. (a)(6). Former subsec. (a)(6) redesignated (a)(5).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 28–3815 of the District of Columbia Code.

**§ 1609. Advisory committee.**

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

**§ 1610. Effect on other laws.**

* * * * *

**(d) Contract or other obligations under State or Federal law.**

Except as specified in sections 1635, 1640, and 1666e of this title, this subchapter and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law. (As amended Pub. L. 93–495, title III, § 307(b), Oct. 28, 1974, 88 Stat. 1516.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–495 added reference to section 1666e of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective upon the expiration of one year after Oct. 28, 1974, see section 308

of Pub. L. 93–495, set out as a note under section 1666 of this title.

**§ 1611. Criminal liability for wilful and knowing violation.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1640 of this title.

**§ 1614. Liability of assignees.**

Except as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter which may be brought against the original creditor in any credit transaction may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary (Pub. L. 90–321, title I, § 115, as added Pub. L. 93–495, title IV, § 413(a), Oct. 28, 1974, 88 Stat. 1520.)

EFFECTIVE DATE

Section effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

PART B.—CREDIT TRANSACTIONS

**§ 1631. Disclosure requirements.**

**(a) Clear and conspicuous disclosure to person extended consumer credit.**

Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended, the information required under this part or part D of this subchapter.

**(b) Statement of information where more than one obligor.**

If there is more than one obligor, a creditor need not furnish a statement of information required under this part or part D of this subchapter to more than one of them.

**(c) Repealed. Pub. L. 94–205, § 11, Jan. 2, 1976, 89 Stat. 1159.**

(As amended Pub. L. 93–495, title III, § 307(c), (d), title IV, § 409, Oct. 28, 1974, 88 Stat. 1516, 1519; Pub. L. 94–205, § 11, Jan. 2, 1976, 89 Stat. 1159.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–205 struck out subsec. (c), which related to disclosure including a full statement of closing costs incurred and permitted estimates of such information where the lender was not in a position to know exact information.

1974—Subsec. (a). Pub. L. 93–495, § 307(c), added reference to part D of this subchapter and struck out "and upon whom a finance charge is or may be imposed" following "extended".

Subsec. (b). Pub. L. 93–495, § 307(d), added reference to part D of this subchapter.

Subsec. (c). Pub. L. 93–495, § 409, added subsec (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment of subsecs. (a) and (b) by section 307(c) and (d) of Pub. L. 93–495 effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

Subsec. (c) of this section effective upon the expiration of one year after Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

REAL ESTATE SETTLEMENT PROCEDURES

Provisions of Real Estate Settlement Procedures Act of 1974, as superseding provisions of subsec. (c) of this section insofar as applying to federally related mortgage loans, see section 2605(e) of Title 12, Banks and Banking.

**§ 1632. Form of disclosure; additional information.**

(a) Regulations of the Board need not require that disclosures pursuant to this part or part D of this subchapter be made in the order set forth in this part or part D of this subchapter, and may permit the use of terminology different from that employed in this part or part D of this subchapter if it conveys substantially the same meaning.

(b) Any creditor may supply additional information or explanations with any disclosures required under this part or part D of this subchapter. (As amended Pub. L. 93–495, title III, § 307(e), (f), Oct. 28, 1974, 88 Stat. 1516, 1517.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–495, § 307(e), added reference to part D of this subchapter wherever appearing therein.

Subsec. (b). Pub. L. 93–495, § 307(f), added reference to part D of this subchapter.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

**§ 1635. Right of rescission as to certain transactions.**

**(a) Disclosure of obligor's right to rescind.**

Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this part, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

**(b) Return of money or property following rescission.**

When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within ten days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall

tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within ten days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.

* * * * *

**(e) Exempted transactions.**

This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling or to a consumer credit transaction in which an agency of a State is the creditor.

**(f) Time limit for exercise of right.**

An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this part have not been delivered to the obligor. (As amended Pub. L. 93–495, title IV, §§ 404, 405, 412, Oct. 28, 1974, 88 Stat. 1517, 1519.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–495, § 404(a), added provision relating to security interest arising by operation of law.

Subsec. (b). Pub. L. 93–495, § 404(b), added provision relating to security interest arising by operation of law.

Subsec. (e). Pub. L. 93–495, § 412, added exemption for consumer credit transactions where a State agency is the creditor.

Subsec. (f). Pub. L. 93–495, § 405, added subsec. (f).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

**§ 1637. Open end consumer credit plans.**

**(a) Required disclosures by creditor.**

Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period.

* * * * *

(8) A statement, in a form prescribed by regulations of the Board of the protection provided by sections 1666 and 1666i of this title to an obligor and the creditor's responsibilities under sections 1666a and 1666i of this title. With respect to each of two billing cycles per year, at semiannual intervals, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to subsection (b) of this section for such billing cycle.

**(b) Statement required with each billing cycle.**

The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period and a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Board sufficient to enable the obligor to identify the transaction, or relate it to copies of sales vouchers or similar instruments previously furnished.

* * * * *

(10) The date by which or the period (if any) within which, payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.

(11) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor.

**(c) Time for making required disclosures.**

In the case of any existing account under an open end consumer credit plan having an outstanding balance of more than $1 at or after the close of the creditor's first full billing cycle under the plan after the effective date of subsection (a) of this section or any amendments thereto, the items described in subsection (a) of this section, to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsection (b) of this section. (As amended Pub. L. 93–495, title III, §§ 304, 305, title IV, §§ 411, 415, Oct. 28, 1974, 88 Stat. 1511, 1519, 1521.)

REFERENCES IN TEXT

The effective date of subsection (a) of this section or any amendments thereto, referred to in subsec. (c), is, respectively, the effective date of Pub. L. 90–321, which is July 1, 1969, and the effective date of any amendments to subsec. (a) of this section.

AMENDMENTS

1974—Subsec. (a)(1). Pub. L. 93–495, § 415(1), added exception relating to nonimposition of a finance charge at the election of the creditor and without disclosure.

Subsec. (a)(8). Pub. L. 93–495, § 304(a), added subsec. (a)(8).

Subsec. (b)(2). Pub. L. 93–495, § 411, substituted provisions requiring a brief identification on or accompanying the statement of credit extension sufficient to enable the obligor to identify the transaction or relate it to copies of sales vouchers or similar instruments previously furnished, for provisions requiring for purchases a brief identification, unless previously furnished, of the goods or services purchased.

Subsec. (b)(10). Pub. L. 93–495, § 415(2), added exception relating to nonimposition of additional finance

charge at the election of the creditor and without disclosure.

Subsec. (b)(11). Pub. L. 93–495, § 305, added subsec. (b)(11).

Subsec. (c). Pub. L. 93–495, § 304(b), substituted provisions relating to disclosure requirements in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsec. (b) of this section, for provisions relating to disclosure requirements in a notice mailed or delivered to the obligor not later than thirty days after July 1, 1969.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment of subsecs. (a)(1) and (b)(10) by section 415 of Pub. L. 93–495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

Amendment of subsecs. (a)(8), (b)(11), and (c) by sections 304 and 305 of Pub. L. 93–495 effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

Amendment of subsec. (b)(2) by section 411 of Pub. L. 93–495 effective upon the expiration of one year after Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1636, 1663, 1666 of this title.

### § 1640. Civil liability.

**(a) Individual or class action for damages; amount of award; factors determining amount of award.**

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part or part D of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action twice the amount of any finance charge in connection with the transaction, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of $100,000 or 1 per centum of the net worth of the creditor; and

(3) in the case of any successful action to enforce the foregoing liability the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

**(b) Correction of error within fifteen days.**

A creditor has no liability under this section for any failure to comply with any requirement imposed under this part, if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.

**(c) Unintentional violations; bona fide errors.**

A creditor may not be held liable in any action brought under this section for a violation of this subchapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

* * * * *

**(f) Good faith compliance with rule, regulation, or interpretation of Board.**

No provision of this section or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

**(g) Recovery for multiple failures to disclose.**

The multiple failure to disclose to any person any information required under this part to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.

**(h) Offset from amount owed to creditor.**

A person may not take any action to offset any amount for which a creditor is potentially liable to such person under subsection (a)(2) of this section against any amount owing to such creditor by such person, unless the amount of the creditor's liability to such person has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party. (As amended Pub. L. 93–495, title IV, §§ 406, 407, 408(a)–(d), Oct. 28, 1974, 88 Stat. 1518.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–495, § 408(a), substituted provisions setting forth determination of amount of liability of any creditor failing to comply with any requirement imposed under part D of this subchapter or this part, for provisions setting forth determination of amount of liability of any creditor failing to disclose in connection with any consumer credit transaction any information required under this part to be disclosed to specified persons.

Subsec. (b). Pub. L. 93–495, § 408(b), added "for any failure to comply with any requirement imposed under this part," preceding "if within".

Subsec. (c). Pub. L. 93–495, § 408(c), substituted "subchapter" for "part".

Subsec. (f). Pub. L. 93–495, § 406, added subsec. (f).

Subsec. (g). Pub. L. 93–495, § 407, added subsec. (g).

Subsec. (h). Pub. L. 93–495, § 408(d), added subsec. (h).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

DETERMINATION OF LIABILITY PRIOR TO OCT. 28, 1974

Section 408(e) of Pub. L. 93–495 provided that: "The amendments made by sections 406 [enacting subsec. (f) of this section], 407 [enacting subsec. (g) of this section], and 408 [enacting subsec. (h) of this section and amending subsecs. (a), (b) and (c) of this section] shall apply in determining the liability of any person under chapter 2 or 4 of the Truth in Lending Act [this part or part D of this subchapter], unless prior to the date of enactment of this Act [Oct. 28, 1974] such liability has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1610, 1641 of this title.

### § 1642. Issuance of credit cards.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title.

### § 1643. Liability of holder of credit card.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title.

### § 1644. Fraudulent use of credit cards; penalties for violations.

(a) Whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(b) Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(c) Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(d) Whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (1) within any one-year period has a value aggregating $1,000 or more, (2) has moved in or is part of, or which constitutes interstate or foreign commerce, and (3) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card; or

(e) Whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (1) within any one-year period have a value aggregating $500 or more, and (2) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit cards; or

(f) Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both. (As amended Pub. L. 93–495, title IV, § 414, Oct. 28, 1974, 88 Stat. 1520.)

AMENDMENTS

1974—Pub. L. 93–495 generally reorganized provisions by designating former unlettered paragraph cls. (a) to (f), and as so designated, expanded prohibitions relating to fraudulent use of credit cards, decreased amount required for fraudulent use from a retail value aggregating $5,000, or more, to enumerated amounts for particular activities, and increased the punishment from a sentence of not more than five years to a sentence of not more than ten years.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title.

### § 1645. Business credit cards; limits on liability of employees.

The exemption provided by section 1603(1) of this title does not apply to the provisions of sections 1642, 1643, and 1644 of this title, except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the provisions of section 1643 of this title, but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 1643 of this title. (Pub. L. 90–321, title I, § 135, as added Pub. L. 93–495, title IV, § 410(a), Oct. 28, 1974, 88 Stat. 1519.)

EFFECTIVE DATE

Section effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

## PART C.—CREDIT ADVERTISING

### § 1665a. More-than-four-installment rule for advertisements.

Any advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit repayable in more than four installments shall, unless a finance charge is imposed, clearly and conspicuously state, in accordance with the regulations of the Board:

"THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES."

(Pub. L. 90–321, title I, § 146, as added Pub. L. 93–495, title IV, § 401(a), Oct. 28, 1974, 88 Stat. 1517.)

EFFECTIVE DATE

Section 416 of Pub. L. 93–495 provided that: "This title [enacting this section and sections 1614 and 1645 of this title, amending sections 1603, 1607, 1635, 1637(a)(1), (b)(10), 1640 and 1644 of this title, and enacting provision set out as a note under section 1640 of this title] takes effect upon the date of its enactment [Oct. 28, 1974], except that sections 409 [amending section 1631 of this title] and 411 [amending section 1637(b)(2) of this

title] take effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]."

## PART D.—CREDIT BILLING [NEW]

### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1602, 1631, 1632, 1640 of title.

### § 1666. Correction of billing errors.

**(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor.**

If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 1637(b)(11) of this title a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 1637(a)(8) of this title) from the obligor in which the obligor—

(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

**(b) Billing error.**

For the purpose of this section, a "billing error" consists of any of the following:

(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

(5) A computation error or similar error of an accounting nature of the creditor on a statement.

(6) Any other error described in regulations of of the Board.

**(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error.**

For the purposes of this section, "action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)" does not include the sending of statements of account to the obligor following written notice from the obligor as specified under subsection (a) of this section, if—

(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a) of this section, and

(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

**(d) Restricting or closing by creditor of account regarded by obligor to contain a billing error.**

Pursuant to regulations of the Board, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) of this section that he believes such account to contain

a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

**(e) Effect of noncompliance with requirements by creditor.**

Any creditor who fails to comply with the requirements of this section or section 1666a of this title forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50. (Pub. L. 90–321, title I, § 161, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1512.)

EFFECTIVE DATE

Section 308 of Pub. L. 93–495 provided that: "This title [which enacted this section and sections 1666a to 1666j of this title, amended sections 1601, 1602, 1610, 1631, 1632, and 1637 of this title, and enacted provision set out as a note under section 1601 of this title] takes effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1637, 1666a of this title.

**§ 1666a. Regulation of credit reports.**

**(a) Reports by creditor on obligor's failure to pay amount regarded as billing error.**

After receiving a notice from an obligor as provided in section 1666(a) of this title, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 1666(a)(2) of this title, and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 1666 of this title and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

**(b) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency.**

If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 1666(a)(2) of this title, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

**(c) Reports by creditor of subsequent resolution of delinquent amounts.**

A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) of this section to the parties to whom such delinquencies were initially reported. (Pub. L. 90–321, title I, § 162, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1513.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1637, 1666 of this title.

**§ 1666b. Length of billing period in credit statement for imposition of finance charge; effect of failure of timely mailing or delivery of statement.**

(a) If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(b) Subsection (a) of this section does not apply in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of such periodic statement within the time period specified in such subsection because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board. (Pub. L. 90–321, title I, § 163, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

**§ 1666c. Prompt crediting of payments; imposition of finance charge.**

Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location, and time indicated by the creditor to avoid the imposition thereof. (Pub. L. 90–321, title I, § 164, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

**§ 1666d. Refunding or crediting of excess payments of obligor.**

Whenever an obligor transmits funds to a creditor in excess of the total balance due on an open end consumer credit account, the creditor shall promptly (1) upon request of the obligor refund the amount of the overpayment, or (2) credit such amount to the obligor's account. (Pub. L. 90–321, title I, § 165, as

added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

**§ 1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor.**

With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction. (Pub. L. 90–321, title I, § 166, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1610 of this title.

**§ 1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; finance charge for sales transactions involving cash discounts.**

(a) With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

(b) With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 1605 of this title, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board. (Pub. L. 90–321, title I, § 167, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

**§ 1666g. Tie-in services prohibited for issuance of credit card.**

Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent. (Pub. L. 90–321, title I, § 168, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

**§ 1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law not affected.**

(a) A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

(b) This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally. (Pub. L. 90–321, title I, § 169, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

**§ 1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses.**

(a) Subject to the limitation contained in subsection (b) of this section, a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction

from the person honoring the credit card; (2) the amount of the initial transaction exceeds $50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses againt a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

(b) The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made. (Pub. L. 90–321, title I, § 170, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1637 of this title.

**§ 1666j. Applicability of State laws; exemptions by Board from credit billing requirements.**

(a) This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of the State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this part if the Board determines that such law gives greater protection to the consumer.

(b) The Board shall by regulation exempt from the requirements of this part any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement. (Pub. L. 90–321, title I, § 171, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1516.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 308 of Pub. L. 93–495, set out as a note under section 1666 of this title.

## SUBCHAPTER IV.—EQUAL CREDIT OPPORTUNITY

**§ 1691. Prohibited activities.**

(a) It shall be unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(b) An inquiry of marital status shall not constitute discrimination for purposes of this subchapter if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit, and not to discriminate in a determination of creditworthiness. (Pub. L. 90–321, title VII, § 701, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521.)

EFFECTIVE DATE

Section 707 of Pub. L. 90–321, as added by Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1525, provided that: "This title [enacting this subchapter and provisions set out as notes under this section] takes effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]."

SHORT TITLE

Section 501 of Pub. L. 93–495 provided that: "This title [enacting this subchapter and notes set out under this section] may be cited as the 'Equal Credit Opportunity Act'."

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

Section 502 of Pub. L. 93–495 provided that: "The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote. It is the purpose of this Act [see Short Title note set out under this section] to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all creditworthy customers without regard to sex or marital status."

**§ 1691a. Definitions; rules of construction.**

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(d) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Board under this subchapter or the provision thereof in question. (Pub. L. 90–321, title VII, § 702, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1522.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 707 of Pub. L. 90–321, set out as a note under section 1691 of this title.

**§ 1691b. Regulations.**

The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. Such regulations shall be prescribed as soon as possible after October 28, 1974, but in no event later than the effective date of this Act. (Pub. L. 90–321, title VII, § 703, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1522.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 707 of Pub. L. 90–321, set out as a note under section 1691 of this title.

**§ 1691c. Administrative enforcement.**

**(a) Enforcing agencies.**

Compliance with the requirements imposed under this subchapter shall be enforced under:

(1) Section 1818 of Title 12, in the case of—

(A) national banks, by the Comptroller of the Currency,

(B) member banks of the Federal Reserve System (other than national banks), by the Board,

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) Sections 1426(i), 1437, 1464(d) and 1730 of Title 12, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) The Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.

(4) The Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) The Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(6) The Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(7) The Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, and production credit association;

(8) The Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to brokers and dealers; and

(9) The Small Business Investment Act of 1958, by the Small Business Administration, with respect to small business investment companies.

**(b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional agency powers.**

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law. The exercise of the authorities of any of the agencies referred to in subsection (a) of this section for the purpose of enforcing compliance with any requirement imposed under this subchapter shall in no way preclude the exercise of such authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

**(c) Overall enforcement authority of Federal Trade Commission.**

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

**(d) Rules and regulations by enforcing agencies.**

The authority of the Board to issue regulations under this subchapter does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter. (Pub. L. 90–321, title VII, § 704, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1522.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified to section 1751 et seq. of Title 12, Banks and Banking.

The acts to regulate commerce, referred to in subsec. (a)(4), are classified generally to Title 49, Transportation. See section 12 of Title 49.

The Federal Aviation Act of 1958, referred to in subsec. (a)(5), is Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 737, which is classified to section 1301 et seq. of Title 49.

The Packers and Stockyards Act, 1921, referred to in subsec. (a)(6), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to section 181 et seq. of Title 7, Agriculture. Section 406 of the Act is classified to sections 226 and 227 of Title 7.

The Farm Credit Act of 1971, referred to in subsec. (a)(7), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to section 2001 et seq. of Title 12.

The Securities Exchange Act of 1934, referred to in subsec. (a)(8), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified to section 78a et seq. of this title.

The Small Business Investment Act of 1958, referred to in subsec. (a)(9), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified to section 661 et seq. of this title.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified to section 41 et seq. of this title. See section 58 of this title.

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 707 of Pub. L. 90–321, set out as a note under section 1691 of this title.

**§ 1691d. Applicability of other laws.**

**(a) Requests for signature of husband and wife for creation of valid lien, etc.**

A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this subchapter: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

**(b) State property laws affecting creditworthiness.**

Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this subchapter.

**(c) State laws prohibiting separate extension of consumer credit to husband and wife.**

Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided,* That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

**(d) Combining credit accounts of husband and wife with same creditor to determine permissible finance charges or loan ceilings under Federal or State laws.**

When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

**(e) Remedies under subchapter in lieu of remedies under State or local laws for discrimination.**

Except as otherwise provided in this subchapter, the applicant shall have the option of pursuing remedies under the provisions of this subchapter in lieu of, but not in addition to, the remedies provided by the laws of any State or governmental subdivision relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction. (Pub. L. 90–321, title VII, § 705, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1523.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 707 of Pub. L. 90–321, set out as a note under section 1691 of this title.

**§ 1691e. Civil liability.**

**(a) Individual or class action for actual damages.**

Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant in an amount equal to the sum of any actual damages sustained by such applicant acting either in an individual capacity or as a representative of a class.

**(b) Recovery of punitive damages in individual action for actual damages; maximum amount of punitive damages.**

Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, as determined by the court, in addition to any actual damages provided in subsection (a) of this section: *Provided, however,* That in pursuing the recovery allowed under this subsection, the applicant may proceed only in an individual capacity and not as a representative of a class.

**(c) Recovery of punitive damages in class action; maximum amount of punitive damages; factors determining amount of award.**

Subsection (b) of this section notwithstanding, any creditor who fails to comply with any requirement imposed under this subchapter may be liable for punitive damages in the case of a class action in such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable and the total recovery in such action shall not exceed the lesser of $100,000 or 1 percent of the net worth of the creditor. In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to

which the creditor's failure of compliance was intentional.

**(d) Action for preventive relief.**

When a creditor fails to comply with any requirement imposed under this subchapter, an aggrieved applicant may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other action.

**(e) Recovery of costs and attorney fees.**

In the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court shall be added to any damages awarded by the court under the provisions of subsections (a), (b), and (c) of this section.

**(f) Good faith compliance with rule, regulation, or interpretation of Board.**

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

**(g) Jurisdiction of courts; time for maintenance of action.**

Without regard to the amount in controversy, any action under this subchapter may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. (Pub. L. 90–321, title VII, § 706, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1524.)

EFFECTIVE DATE

Section effective upon the expiration of one year after Oct. 28, 1974, see section 707 of Pub. L. 90–321, set out as a note under section 1691 of this title.

## Chapter 42.—INTERSTATE LAND SALES

**§ 1701. Definitions.**

For the purposes of this chapter, the term—

* * * * *

(3) "subdivision" means any land, located in any State or in a foreign country, which is divided or proposed to be divided into fifty or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan and where subdivided land is offered for sale or lease by a single developer, or a group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;

* * * * *

(7) "interstate commerce" means trade or commerce among the several States or between any foreign country and any State;

* * * * *

(As amended Pub. L. 93–383, title VIII, § 812(a), Aug. 22, 1974, 88 Stat. 736.)

AMENDMENTS

1974—Par. (3). Pub. L. 93–383, § 812(a)(1), added ", located in any State or in a foreign country" following "any land".

Par. (7). Pub. L. 93–383, § 812(a)(2), added "or between any foreign country and any State" following "States".

**§ 1702. Exemptions.**

(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to—

* * * * *

(9) the sale or lease of lots to any person who acquire such lots for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business;

(10) the sale or lease of real estate which is free and clear of all liens, encumbrances, and adverse claims if each and every purchaser or his or her spouse has made a personal on-the-lot inspection of the real estate which he purchased and if the developer executes a written affirmation to that effect to be made a matter of record in accordance with rules and regulations of the Secretary. As used in this subparagraph, the terms "liens", "encumbrances", and "adverse claims" do not refer to property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, nor to taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable, nor to beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, if (A) the developer, prior to the time the contract of sale or lease is entered into, has furnished each purchaser or lessee with a statement, the form and content of which has been approved by the Secretary, setting forth in descriptive and concise terms all such reservations, taxes, assessments, and restrictions which are applicable to the lot to be purchased or leased, and (B) receipt of such statement has been acknowledged in writing by the purchaser or lessee, and a copy of the acknowledged statement is filed with the Secretary in accordance with such rules and regulations as he may require; or

(11) the sale or lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development, when—

(A) local authorities have approved access from such real estate to a public street or highway;

(B) the purchaser or lessee of such real estate is a duly organized corporation, partnership, trust, or business entity engaged in commercial or industrial business;

(C) the purchaser or lessee of such real estate is represented in the transaction of sale or lease by a representative of its own selection;

(D) the purchaser or lessee of such real estate affirms in writing to the seller that it

either (i) is purchasing or leasing such real estate substantially for its own use or (ii) has a binding commitment to sell, lease, or sublease such real estate to an entity which meets the requirements of subparagraph (B), is engaged in commercial or industrial business, and is not affiliated with the seller or agent; and

(E) a policy of title insurance or title opinion is issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as may be approved in writing by such purchaser or the lessee prior to recordation of the instrument of conveyance or execution of the lease, but (i) nothing herein shall be construed as requiring the recordation of a lease, and (ii) any purchaser or lessee may waive, in writing in a separate document, the requirement of this subparagraph that a policy of title insurance or title opinion be issued in connection with the transaction.

* * * * *

(As amended Pub. L. 93–383, title VIII, § 812(b), Aug. 22, 1974, 88 Stat. 736.)

AMENDMENTS

1974—Subsec. (a)(11). Pub. L. 93–383 added subsec. (a)(11).

**§ 1703. Prohibitions relating to sale or lease of lots in subdivisions; voidability of contracts or agreements.**

* * * * *

(b) Any contract or agreement for the purchase or leasing of a lot in a subdivision covered by this chapter, where the property report has not been given to the purchaser in advance or at the time of his signing, shall be voidable at the option of the purchaser. A purchaser may revoke such contract or agreement until midnight of the third business day following the consummation of the transaction, where he has received the property report less than forty-eight hours before he signed the contract or agreement, and the contract or agreement shall so provide. (As amended Pub. L. 93–383, title VIII, § 812(c)(1), Aug. 22, 1974, 88 Stat. 737.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 383 substituted "until midnight of the third business day following the consummation of the transaction" for "within forty-eight hours" and struck out provisions relating to exceptions of contracts or agreements stipulating to the nonapplicability of the revocation authority to certain purchasers.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 812(c)(2) of Pub. L. 93–383 provided that: "The amendments made by paragraph (1) [amending subsec. (b) of this section] shall be effective sixty days after the date of the enactment of this Act [Aug. 22, 1974]."

## Chapter 45.—EMERGENCY LOAN GUARANTEES TO BUSINESS ENTERPRISES [NEW]

Sec.
1841. Emergency Loan Guarantee Board; establishment; membership; voting.
1842. Same; authority for loan guarantees; terms and conditions.
1843. Limitations and conditions of loan guarantees.
(a) Necessary findings.
(b) Term of loans; renewal.
(c) Interest rates, determination; guarantee fee.
1844. Security of loan guarantees.
1845. Requirements applicable to loan guarantees.
(a) Stock dividends or other payments, prohibition; waiver.
(b) Managerial changes.
(c) Financial statement; access to documents.
(d) Exhaustion of remedies.
(e) Protective provisions; advances.
(f) Loan security, priority, collateral.
1846. Powers and duties.
(a) Board; inspection of documents; disapproval of certain transactions.
(b) General Accounting Office; audit; report to Board and Congress.
1847. Maximum obligation.
1848. Emergency loan guarantee fund.
(a) Establishment; use; investment.
(b) Guarantee fee; deposits in fund.
(c) Payments; issuance of notes or other obligations when fund moneys insufficient: forms and denominations, maturities, terms and conditions, interest rate; public debt transaction.
1849. Federal reserve banks as fiscal agents.
1850. Protection of Government's interest.
(a) Attorney General, enforcement authority; payments into emergency loan guarantee fund.
(b) Recovery rights; subrogation.
1851. Reports to Congress; recommendations.
1852. Termination date.

**§ 1841. Emergency Loan Guarantee Board; establishment; membership; voting.**

There is created on Emergency Loan Guarantee Board (referred to in this chapter as the "Board") composed of the Secretary of the Treasury, as Chairman, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Securities and Exchange Commission. Decisions of the Board shall be made by majority vote. (Pub. L. 92–70, § 2, Aug. 9, 1971, 85 Stat. 178.)

SHORT TITLE

Section 1 of Pub. L. 92–70 provided that: "This Act [enacting this chapter] may be cited as the 'Emergency Loan Guarantee Act'."

**§ 1842. Same; authority for loan guarantees; terms and conditions.**

The Board, on such terms and conditions as it deems appropriate, may guarantee, or make commitments to guarantee, lenders against loss of principal or interest on loans that meet the requirements of this chapter. (Pub. L. 92–70, § 3, Aug. 9, 1971, 85 Stat. 178.)

**§ 1843. Limitations and conditions of loan guarantees.**

**(a) Necessary findings.**

A guarantee of a loan may be made under this chapter only if—

(1) the Board finds that (A) the loan is needed to enable the borrower to continue to furnish goods or services and failure to meet this need would adversely and seriously affect the economy of or employment in the Nation or any region thereof, (B) credit is not otherwise available to the borrower under reasonable terms or conditions, and (C) the prospective earning power of the borrower, together with the character and value of the security pledged, furnish reasonable assurance that it will be able to repay the loan within the time fixed, and afford reasonable protection to the United States; and

(2) the lender certifies that it would not make the loan without such guarantee.

**(b) Term of loans; renewal.**

Loans guaranteed under this chapter shall be payable in not more than five years, but may be renewable for not more than an additional three years.

**(c) Interest rates, determination; guarantee fee.**

(1) Loans guaranteed under this chapter shall bear interest payable to the lending institutions at rates determined by the Board taking into account the reduction in risk afforded by the loan guarantee and rates charged by lending institutions on otherwise comparable loans.

(2) The Board shall prescribe and collect a guarantee fee in connection with each loan guaranteed under this chapter. Such fee shall reflect the Government's administrative expense in making the guarantee and the risk assumed by the Government and shall not be less than an amount which, when added to the amount of interest payable to the lender of such loan, produces a total charge appropriate for loan agreements of comparable risk and maturity if supplied by the normal capital markets. (Pub. L. 92–70, § 4, Aug. 9, 1971, 85 Stat. 178.)

**§ 1844. Security for loan guarantees.**

In negotiating a loan guarantee under this chapter, the Board shall make every effort to arrange that the payment of the principal of and interest on any plan guaranteed shall be secured by sufficient property of the enterprise to collateralize fully the amount of the loan guarantee. (Pub. L. 92–70, § 5, Aug. 9, 1971, 85 Stat. 179.)

**§ 1845. Requirements applicable to loan guarantees.**

**(a) Stock dividends or other payments, prohibition; waiver.**

A guarantee agreement made under this chapter with respect to an enterprise shall require that while there is any principal or interest remaining unpaid on a guaranteed loan to that enterprise the enterprise may not—

(1) declare a dividend on its common stock; or

(2) make any payment on its other indebtedness to a lender whose loan has been guaranteed under this chapter.

The Board may waive either or both of the requirements set forth in this subsection, as specified in the guarantee agreement covering a loan to any particular enterprise, if it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee.

**(b) Managerial changes.**

If the Board determines that the inability of an enterprise to obtain credit without a guarantee under this chapter is the result of a failure on the part of management to exercise reasonable business prudence in the conduct of the affairs of the enterprise, the Board shall require before guaranteeing any loan to the enterprise that the enterprise make such management changes as the Board deems necessary to give the enterprise a sound managerial base.

**(c) Financial statement; access to documents.**

A guarantee of a loan to any enterprise shall not be made under this chapter unless—

(1) the Board has received an audited financial statement of the enterprise; and

(2) the enterprise permits the Board to have the same access to its books and other documents as the Board would have under section 1846 of this title in the event the loan is guaranteed.

**(d) Exhaustion of remedies.**

No payment shall be made or become due under a guarantee entered into under this chapter unless the lender has exhausted any remedies which it may have under the guarantee agreement.

**(e) Protective provisions; advances.**

(1) Prior to making any guarantee under this chapter, the Board shall satisfy itself that the underlying loan agreement on which the guarantee is sought contains all the affirmative and negative covenants and other protective provisions which are usual and customary in loan agreements of a similar kind, including previous loan agreements between the lender and the borrower, and that it cannot be amended, or any provisions waived, without the Board's prior consent.

(2) On each occasion when the borrower seeks an advance under the loan agreement, the guarantee authorized by this chapter shall be in force as to the funds advanced only if—

(A) the lender gives the Board at least ten days' notice in writing of its intent to provide the borrower with funds pursuant to the loan agreement;

(B) the lender certifies to the Board before an advance is made that, as of the date of the notice provided for in subparagraph (A), the borrower is not in default under the loan agreement: *Provided,* That if a default has occurred the lender shall report the facts and circumstances relating thereto to the Board and the Board may expressly and in writing waive such default in any case where it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee; and

(C) the borrower provides the Board with a plan setting forth the expenditures for which the advance will be used and the period during which the expenditures will be made, and, upon the expiration of such periods, reports to the Board any instances in which amounts advanced have not been expended in accordance with the plan.

**(f) Loan security, priority; collateral.**

(1) A guarantee agreement made under this chapter shall contain a requirement that as between the Board and the lender, the Board shall have a priority with respect to, and to the extent of, the lender's interest in any collateral securing the loan and any earlier outstanding loans. The Board shall take all steps necessary to assure such priority against any other persons.

(2) As used in paragraph (1) of this subsection, the term "collateral" includes all assets pledged

under loan agreements and, if appropriate in the opinion of the Board, all sums of the borrower on deposit with the lender and subject to offset under section 108 of Title 11. (Pub. L. 92–70, § 6, Aug. 9, 1971, 85 Stat. 179.)

**§ 1846. Powers and duties.**

**(a) Board; inspection of documents; disapproval of certain transactions.**

The Board is authorized to inspect and copy all accounts, books, records, memoranda, correspondence, and other documents of any enterprise which has received financial assistance under this chapter concerning any matter which may bear upon (1) the ability of such enterprise to repay the loan within the time fixed therefor; (2) the interests of the United States in the property of such enterprise; and (3) the assurance that there is reasonable protection to the United States. The Board is authorized to disapprove any transaction of such enterprise involving the disposition of its assets which may affect the repayment of a loan that has been guaranteed pursuant to the provisions of this chapter.

**(b) General Accounting Office; audit; report to Board and Congress.**

The General Accounting Office shall make a detailed audit of all accounts, books, records, and transactions of any borrower with respect to which an application for a loan guarantee is made under this chapter. The General Accounting Office shall report the results of such audit to the Board and to the Congress. (Pub. L. 92–70, § 7, Aug. 9, 1971, 85 Stat. 180.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1845 of this title.

**§ 1847. Maximum obligation.**

The maximum obligation of the Board under all outstanding loans guaranteed by it shall not exceed at any time $250,000,000. (Pub. L. 92–70, § 8, Aug. 9, 1971, 85 Stat. 181.)

**§ 1848. Emergency loan guarantee fund.**

**(a) Establishment; use; investment.**

There is established in the Treasury an emergency loan guarantee fund to be administered by the Board. The fund shall be used for the payment of the expenses of the Board and for the purpose of fulfilling the Board's obligations under this chapter. Moneys in the fund not needed for current operations may be invested in direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof.

**(b) Guarantee fee; deposits in fund.**

The Board shall prescribe and collect a guarantee fee in connection with each loan guaranteed by it under this chapter. Sums realized from such fees shall be deposited in the emergency loan guarantee fund.

**(c) Payments; issuance of notes or other obligations when fund moneys insufficient: forms and denominations, maturities, terms and conditions, interest rate; public debt transaction.**

Payments required to be made as a consequence of any guarantee by the Board shall be made from the emergency loan guarantee fund. In the event that moneys in the fund are insufficient to make such payments, in order to discharge its responsibilities, the Board is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Board with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations. (Pub. L. 92–70, § 9, Aug. 9, 1971, 85 Stat. 181.)

REFERENCES IN TEXT

The Second Liberty Bond Act, as amended, referred to in subsec. (c), is act Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended, which is classified to section 745, former section 747, sections 752, 752a, 753, 754, 754a, 754b, 757 757b, and 757c, former section 757c–1, sections 757c–2, 757c–3, 757c–4, 757d, 757e, 758, 760, and 764, former section 765, and sections 766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

**§ 1849. Federal reserve banks as fiscal agents.**

Any Federal Reserve bank which is requested to do so shall act as fiscal agent for the Board. Each such fiscal agent shall be reimbursed by the Board for all expenses and losses incurred by it in acting as agent on behalf of the Board. (Pub. L. 92–70, § 10, Aug. 9, 1971, 85 Stat. 181.)

**§ 1850. Protection of Government's interest.**

**(a) Attorney General, enforcement authority; payments into emergency loan guarantee fund.**

The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States or any officer or agency thereof as a result of the issuance of guarantees under this chapter. Any sums recovered pursuant to this section shall be paid into the emergency loan guarantee fund.

**(b) Recovery rights; subrogation.**

The Board shall be entitled to recover from the borrower, or any other person liable therefor, the amount of any payments made pursuant to any guarantee agreement entered into under this chapter, and upon making any such payment, the Board shall be subrogated to all the rights of the recipient thereof. (Pub. L. 92–70, § 11, Aug. 9, 1971, 85 Stat. 181.)

**§ 1851. Reports to Congress; recommendations.**

The Board shall submit to the Congress annually a full report of its operations under this chapter. In addition, the Board shall submit to the Congress a special report not later than June 30, 1973, which shall include a full report of the Board's operations together with its recommendations with respect to

the need to continue the guarantee program beyond the termination date specified in section 1852 of this title. If the Board recommends that the program should be continued beyond such termination date, it shall state its recommendations with respect to the appropriate board, agency, or corporation which should administer the program. (Pub. L. 92–70, § 12, Aug. 9, 1971, 85 Stat. 182.)

**§ 1852. Termination date.**

The authority of the Board to enter into any guarantee or to make any commitment to guarantee under this chapter terminates on December 31, 1973. Such termination does not affect the carrying out of any contract, guarantee, commitment, or other obligation entered into pursuant to this chapter prior to that date, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this chapter. (Pub. L. 92–70, § 13, Aug. 9, 1971, 85 Stat. 182.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1851 of this title.

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1915. Determination of compliance by manufacturer with bumper standards—Continued
(b) Entry into factory, warehouse, or establishment for reasonable inspection by duly designated officers, etc., of Secretary upon presentment to owner, operator, or agent in charge of credentials and written notice.
(c) Certification by manufacturer or distributor to distributor or dealer at time of delivery of vehicle or item of equipment of conformance to applicable Federal bumper standards; form of certification; nonapplicability to exports.
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(a) Failure to comply with bumper standard, rule, recordkeeping, inspection, or certification requirements.
(b) Exemptions from compliance with bumper standards; compliance of imported passenger motor vehicles or equipment with bumper standard; importation of passenger motor vehicle or equipment after first purchase in good faith for purpose other than resale.
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1917. Enforcement provisions.
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(c) Injunctive relief to restrain violations of bumper standards; petition; jurisdiction; notice by Secretary to person against whom action is contemplated to present view and achieve compliance; criminal contempt proceedings; venue; subpenas for witnesses.
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1962. Eligibility of States for grants or other assistance; determination by Secretary of requirements for demonstration projects.
1963. Application by State for grant or other assistance; form, contents, and manner of application; limitation on amount of grant; time period for availability of financial assistance for inspection costs; retention of equipment by State; manner of payments.

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1987. Lawful service, repair, or replacement of odometer; adjustment of mileage; notice of adjustment; unlawful removal or alteration of notice.
1988. Disclosure requirements upon transfer of ownership of motor vehicle; promulgation of rules; violations.
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## § 1901. Definitions.

For the purpose of this chapter (except part A of subchapter V):

(1) The term "passenger motor vehicle" means a motor vehicle with motive power, designed for carrying twelve persons or less, except (A) a motorcycle or (B) a truck not designed primarily to carry its operator or passengers.

(2) The term "multipurpose passenger vehicle" means a passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation.

(3) The term "passenger motor vehicle equipment" means (A) any system, part or component of a passenger motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as an accessory, or addition to a passenger motor vehicle, or (B) a towing device.

(4) The term "towing device" means any device manufactured or sold for use in towing a passenger motor vehicle.

(5) The term "property loss reduction standard" means a minimum performance standard established for the purpose of increasing the resistance of passenger motor vehicles or passenger motor vehicle equipment to damage resulting from motor vehicle accidents or for the purpose of reducing the cost of repairing such vehicles or such equipment damaged as a result of such accidents.

(6) The term "bumper standard" means any property loss reduction standard the purpose of which is (A) to eliminate or reduce substantially physical damage to the front or rear ends (or both) of a passenger motor vehicle resulting from (i) a low-speed collision (including but not limited to a low-speed collision with a fixed barrier) or (ii) from the towing of such vehicle, or (B) to reduce substantially the cost of repair of the front or rear ends (or both) of such a vehicle when damaged (i) in such a collision or (ii) as a result of being towed; but such a standard may not specify a specific dollar amount for the cost of repair of a vehicle when so damaged.

(7) The term "manufacturer" means any person engaged in the manufacturing or assembling of passenger motor vehicles or passenger motor vehicle equipment including any person importing motor vehicles or motor vehicle equipment for resale.

(8) The term "make" when used in describing a passenger motor vehicle means the trade name of the manufacturer of that vehicle.

(9) The term "model" when used in describing a passenger motor vehicle means a category of passenger motor vehicle based upon the size, style, and type of any make of passenger motor vehicle.

(10) The term "motor vehicle accident" means an accident arising out of the operation, maintenance, or use of a passenger motor vehicle or passenger motor vehicle equipment.

(11) The term "Secretary" means the Secretary of Transportation.

(12) The term "insurer of passenger motor vehicles" means any person engaged in the business of issuing (or reinsuring, in whole or part) passenger motor vehicle insurance policies.

(13) The term "damage susceptibility" means susceptibility to physical damage incurred by a passenger motor vehicle involved in a motor vehicle accident.

(14) The term "crashworthiness" means the protection that a passenger motor vehicle affords its passengers against personal injury or death as a result of a motor vehicle accident.

(15) The term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

(16) The term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(17) The term "interstate commerce" means commerce between any place in a State and any place in another State, or between places in the same State through another State.

(18) The term "United States district courts" means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(Pub. L. 92–513, § 2, Oct. 20, 1972, 86 Stat. 947, amended Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 901.)

AMENDMENTS

1975—Pub. L. 94–163 inserted "(except part A of subchapter V)" in the provisions preceding par. (1).

SHORT TITLE

Section 1 of Pub. L. 92–513 provided: "That this Act [which enacted this chapter and provisions set out as notes under section 1981 of this title] may be cited as the 'Motor Vehicle Information and Cost Savings Act'."

## SUBCHAPTER I.—BUMPER STANDARDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2002 of this title.

### § 1911. Congressional findings and declaration of purpose.

(a) The Congress finds that it is necessary to reduce the economic loss resulting from damage to passenger motor vehicles involved in motor vehicle accidents.

(b) It is the purpose of this subchapter to reduce the extent of such economic loss by providing for the promulgation and enforcement of bumper standards. (Pub. L. 92–513, title I, § 101, Oct. 20, 1972, 86 Stat. 948.)

### § 1912. Promulgation of bumper standards.

(a) Authority of Secretary; applicability to passenger motor vehicles and equipment.

Subject to subsections (b) through (e) of this section, the Secretary by rule—

(1) shall promulgate bumper standards applicable to all passenger motor vehicles manufactured in or imported into the United States, and

(2) may promulgate bumper standards applicable to any item of passenger motor vehicle equipment so manufactured or imported,

except that such a rule shall not apply to any vehicle or item of passenger motor vehicle equipment which is intended solely for export (and is so labeled or tagged on the vehicle or equipment itself and on the outside of the container, if any) and which is exported.

(b) Criteria; conflict of standards with motor vehicle safety standards.

(1) Any standard under subsection (a) of this section shall seek to obtain the maximum feasible reduction of costs to the public and to the consumer, taking into account:

(A) the cost of implementing the standard and the benefits attainable as the result of implementation of the standards;

(B) the effect of implementation of the standard on the cost of insurance and prospective legal fees and costs;

(C) savings in terms of consumer time and inconvenience; and

(D) considerations of health and safety, including emission standards.

(2) Bumper standards under this subchapter shall not conflict with motor vehicle safety standards promulgated under title I of the National Traffic and Motor Vehicle Safety Act of 1966.

(c) Exemptions; attachment of detachable hitches.

(1) In promulgating any bumper standard under this subchapter the Secretary may for good cause shown—

(A) exempt partially or completely any multipurpose passenger motor vehicle; or

(B) exempt partially or completely any make, model, or class of passenger motor vehicle manufactured for a special use, if such standard would unreasonably interfere with the special use of such vehicle.

(2) To the maximum extent practicable, a bumper standard promulgated by the Secretary shall not preclude the attachment of detachable hitches.

**(d) Effective date.**

The Secretary shall establish the effective date of any bumper standard when finally promulgating the standard, and such standard shall apply only to passenger motor vehicles or passenger motor vehicle equipment manufactured on or after such effective date. Such effective date shall not be—

(1) earlier than the date on which such standard is finally promulgated, or

(2) later than eighteen months after final promulgation of the standard unless the Secretary presents to Congress and publishes a detailed explanation of the reasons for such later effective date.

In no event shall the Secretary establish an effective date which is earlier than July 1, 1973.

**(e) Rule making procedure; hearing.**

(1) All rules establishing, amending, or revoking a bumper standard under this subchapter shall be issued pursuant to section 553 of Title 5, except that the Secretary shall give interested persons an opportunity for oral presentation of data, views, or arguments, and the opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(2) The Secretary may also conduct a hearing in accordance with such conditions or limitations as he may make applicable thereto, for the purpose of resolving any issue of fact material to the establishing, amending, or revoking of a bumper standard. (Pub. L. 92–513, title I, § 102, Oct. 20, 1972, 86 Stat. 949.)

REFERENCES IN TEXT

Title I of the National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsec. (b)(2), is classified to section 1391 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1913, 1920 of this title.

**§ 1913. Judicial review of rules establishing bumper standards.**

**(a) Filing of petition; time for filing; jurisdiction; venue; transmittal of copy of petition to Secretary; filing of record of proceedings by Secretary.**

Any person who may be adversely affected by any rule issued under section 1912 of this title may at any time prior to sixty days after such rule is issued file a petition with the United States Court of Appeals for the District of Columbia, or any circuit wherein such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or his delegate. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his rule, as provided in section 2112 of Title 28.

**(b) Additional evidence before Secretary; procedure; findings and recommendations of Secretary.**

If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced in a hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his rule, with the return of such additional evidence.

**(c) Applicability of sections 701 to 706 of Title 5.**

Upon the filing of the petition referred to in subsection (a) of this section, the court shall have jurisdiction to review the rule in accordance with chapter 7 of Title 5, and to grant appropriate relief as provided in such chapter.

**(d) Review by Supreme Court.**

The judgment of the court affirming or setting aside, in whole or in part, any such rule of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

**(e) Availability of other remedies.**

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law. (Pub. L. 92–513, title I, § 103, Oct. 20, 1972, 86 Stat. 950.)

**§ 1914. Powers of Secretary.**

**(a) Conduct of hearings; subpena of witnesses and production of books, records, etc.; examination of relevant documentary evidence; orders requiring persons to file reports and answer specific questions; enforcement of subpenas and orders by district courts; contempt proceedings; payment of fees and mileage to witnesses.**

(1) For the purpose of carrying out the provisions of this subchapter, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(2) In order to carry out the provisions of this subchapter, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this subchapter.

(3) The Secretary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this subchapter. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under paragraph (1) or para-

graph (3) of this subsection, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

**(b) Disclosure of confidential information.**

All information reported to or otherwise obtained by the Secretary or his representative under this subchapter which information contains or relates to a trade secret or other matter referred to in section 1905 of Title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this subchapter or when relevant in any proceeding under this subchapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

**(c) Requests for information from other Federal departments, agencies, and instrumentalities; compliance; detail of personnel by head of other Federal departments, agencies, and instrumentalities.**

(1) The Secretary is authorized to request from any department, agency, or instrumentality of the Government any information he deems necessary to carry out his functions under this subchapter; and each such department, agency, or instrumentality is authorized and directed to cooperate with the Secretary and to furnish such information to the Department of Transportation upon request made by the Secretary.

(2) The head of any Federal department, agency, or instrumentality is authorized to detail, on a reimbursable basis, any personnel of such department, agency, or instrumentality to assist in carrying out the duties of the Secretary under this subchapter.

**(d) Conduct of research.**

The Secretary shall conduct such research as is necessary for him to carry out his functions under this subchapter. (Pub. L. 92–513, title I, § 104, Oct. 20, 1972, 86 Stat. 950.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1919 of this title.

**§ 1915. Determination of compliance by manufacturer with bumper standards.**

**(a) Records, reports, and information from manufacturer; inspection and examination of vehicles and relevant documents; availability of vehicles and equipment for testing; negotiated price for test vehicles and equipment.**

Every manufacturer of passenger motor vehicles or of passenger motor vehicle equipment shall establish and maintain such records, make such reports, and provide such items and information (including the supplying of vehicles or equipment for testing) as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this subchapter and bumper standards prescribed pursuant to this subchapter and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect vehicles and appropriate books, papers, records, and documents relevant to determining whether such manufacturer has acted or is acting in compliance with this subchapter and bumper standards prescribed pursuant to this subchapter. Such manufacturer shall make available all such items and information in accordance with such reasonable rules as the Secretary may prescribe. Vehicles and equipment for testing shall be made available under this subsection at a negotiated price that does not exceed the manufacturer's cost.

**(b) Entry into factory, warehouse, or establishment for reasonable inspection by duly designated officers, etc., of Secretary upon presentment to owner, operator, or agent in charge of credentials and written notice.**

For purposes of enforcement of this subchapter, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter any factory, warehouse, or establishment in which passenger motor vehicles or passenger motor vehicle equipment is manufactured, or held for introduction into interstate commerce or are held for sale after such introduction; and (2) to inspect such factory, warehouse, or establishment. Each such inspection shall be conducted at reasonable times and in a reasonable manner and shall be commenced and completed with reasonable promptness.

**(c) Certification by manufacturer or distributor to distributor or dealer at time of delivery of vehicle or item of equipment of conformance to applicable Federal bumper standards; form of certification; nonapplicability to exports.**

(1) Every manufacturer or distributor of a passenger motor vehicle subject to a Federal bumper standard under this subchapter, or an item of passenger motor vehicle equipment subject to such a standard, shall furnish to the distributor or dealer at the time of delivery of such vehicle or item of equipment by such manufacturer or distributor a certification that each such vehicle or item of equipment conforms to applicable Federal bumper standards. The Secretary is authorized to issue rules prescribing the manner and form of such certification.

(2) Paragraph (1) of this subsection shall not apply to any passenger motor vehicle or item of passenger motor vehicle equipment which is intended solely for export (and is so labeled or tagged on the vehicle or equipment itself and on the outside of the container, if any) and which is exported. (Pub. L. 92–513, title I, § 105, Oct. 20, 1972, 86 Stat. 952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1916 of this title.

**§ 1916. Prohibited acts.**

**(a) Failure to comply with bumper standard, rule, recordkeeping, inspection, or certification requirements.**

No person shall—

(1) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the date

any applicable Federal bumper standard takes effect under this subchapter unless it is in conformity with such standard;

(2) fail to comply with any rule prescribed by the Secretary under this subchapter;

(3) fail to keep specified records or refuse access to or copying of records, or fail to make reports or provide items or information, or fail to refuse to permit entry or inspection, as required under this subchapter or any rule issued thereunder; or

(4) (A) fail to furnish a certificate required by section 1915(c) of this title, or (B) issue a certificate required by such subsection to the effect that a passenger motor vehicle or passenger motor vehicle equipment conforms to all applicable bumper standards, if such person knows, or in the exercise of due care has reason to know, that such certificate is false or misleading in a material respect.

**(b) Exemptions from compliance with bumper standards; compliance of imported passenger motor vehicles or equipment with bumper standard; importation of passenger motor vehicle or equipment after first purchase in good faith for purpose other than resale.**

(1) Paragraph (1) of subsection (a) of this section shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any passenger motor vehicle or any passenger motor vehicle equipment after the first purchase of it in good faith for purposes other than resale. Nothing contained in this paragraph shall be construed as prohibiting the Secretary from promulgating any standard which requires vehicles or equipment to be manufactured so as to perform in accordance with the standard over a specified period of operation or use.

(2) Paragraph (1) of subsection (a) of this section shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that the vehicle or item of equipment is not in conformity with applicable bumper standards or to any person who, prior to such first purchase, holds a certificate issued under section 1915(c) of this title to the effect that the vehicle or item of equipment conforms to all applicable Federal bumper standards, unless such person knows that such vehicle or such equipment does not so conform.

(3) A passenger motor vehicle or passenger motor vehicle equipment offered for importation in violation of paragraph (1) of subsection (a) of this section shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary; except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such vehicle or equipment into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such vehicle or such equipment will be brought into conformity with any applicable Federal bumper standard prescribed under this subchapter, or will be exported or abandoned to the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the importation of any passenger motor vehicle or passenger motor vehicle equipment after the first purchase of it in good faith for purposes other than resale.

**(c) Liability under statutory or common law not affected by compliance with bumper standard.**

Compliance with any Federal bumper standard issued under this subchapter does not exempt any person from any liability under statutory or common law. (Pub. L. 92–513, title I, § 106, Oct. 20, 1972, 86 Stat. 952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1917 of this title.

**§ 1917. Enforcement provisions.**

**(a) Civil penalties; assessment and collection in civil action; separate nature of violations; maximum amount of penalties.**

Whoever violates subsection (a) of section 1916 of this title may be assessed a civil penalty of not to exceed $1,000 for each violation. Such penalty shall be assessed by the Secretary and collected in a civil action brought by the Attorney General or by the Secretary (with the concurrence of the Attorney General) by any of the Secretary's attorneys designated by the Secretary for such purpose. With respect to violations of paragraph (1) or (4) of subsection (a) of section 1916 of this title, a separate violation is committed with respect to each passenger motor vehicle or each item of passenger motor vehicle equipment which fails to conform to an applicable bumper standard or for which a certificate is not furnished or for which a misleading or false certificate is issued; except that the maximum civil penalty shall not exceed $800,000 for any related series of violations.

**(b) Violations by persons or corporations subsequent to receipt of notice of noncompliance; liability; amount of penalties.**

(1) Any person who knowingly and willfully violates section 1916(a)(1) of this title after having received notice of noncompliance from the Secretary shall be fined not more than $50,000 or be imprisoned not more than one year, or both.

(2) If a corporation violates section 1916(a)(1) of this title after having received notice of noncompliance from the Secretary, any individual director, officer, or agent of such corporation who knowingly and willfully authorized, ordered, or performed any of the acts or practices constituting in whole or in part such violation and who had knowledge of such notice from the Secretary shall be subject to penalties under this section in addition to the corporation.

**(c) Injunctive relief to restrain violations of bumper standards; petition; jurisdiction; notice by Secretary to person against whom action is contemplated to present views and achieve compliance; criminal contempt proceedings; venue; subpenas for witnesses.**

(1) Upon petition by the Secretary or by the Attorney General on behalf of the United States, the United States district courts shall have jurisdiction for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure to restrain violations of this subchapter, or to restrain the sale, offer for sale, or the introduction or delivery for introduction in interstate

commerce, or the importation into the United States, of any passenger motor vehicle or passenger motor vehicle equipment which is determined, prior to the first purchase of such vehicle or such equipment in good faith for purposes other than resale, not to conform to applicable bumper standards prescribed pursuant to this subchapter. Whenever practicable, the Secretary shall give notice to any person against whom an action for injuctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(2) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this subsection, which violation also constitutes a violation of this subchapter, trial shall be by the court, or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(3) Actions under paragraph (1) of this subsection and under subsection (a) of this section may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

(4) In any actions brought under paragraph (1) of this subsection and under subsection (a) of this section, subpenas for witnesses who are required to attend a United States district court may run into any other district. (Pub. L. 92–513, title I, § 107, Oct. 20, 1972, 86 Stat. 953.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1947, 1948, 1990 of this title.

### § 1918. Civil action against manufacturer for failure to comply with bumper standards; persons entitled to bring suit; jurisdiction; venue; items of recovery; period of limitation.

(a) Any owner of a passenger motor vehicle who sustains damages as a result of a motor vehicle accident because such vehicle did not comply with any applicable Federal bumper standard under this subchapter may bring a civil action against the manufacturer of that vehicle in the United States District Court for the District of Columbia, or in the United States district court for the judicial district in which that owner resides, to recover the amount of those damages, and in the case of any such successful action to recover that amount, costs and reasonable attorneys' fees shall be awarded to that owner.

(b) Any such action shall be brought within three years of the date of the motor vehicle accident. (Pub. L. 92–513, title I, § 108, Oct. 20, 1972, 86 Stat. 955.)

### § 1919. Public access to information.

Subject to section 1914(b) of this title, copies of any communications, documents, reports, or other information sent or received by the Secretary in connection with his duties under this subchapter shall be made available to any member of the public, upon request, at cost. (Pub. L. 92–513, title I, § 109, Oct. 20, 1972, 86 Stat. 955.)

### § 1920. State and local bumper standards; establishment; enforcement; bumper standards for Federal, State, or locally-owned vehicles.

(a) Except as provided in subsection (b) of this section, no State or political subdivision thereof shall have any authority to establish or enforce with respect to any passenger motor vehicle or passenger motor vehicle equipment offered for sale any bumper standard which is not identical to a Federal bumper standard.

(b) (1) Until a Federal bumper standard takes effect with respect to an aspect of performance of a passenger motor vehicle or of an item of passenger motor vehicle equipment, neither this chapter nor the National Traffic and Motor Vehicle Safety Act of 1966 shall affect the authority of a State to continue to enforce any bumper standard which is applicable to the same aspect of performance of such vehicle or item of equipment, which is not in conflict with any Federal standard promulgated under title I of the National Traffic and Motor Vehicle Safety Act of 1966, and which was in effect or had been promulgated on October 20, 1972.

(2) The Federal Government or the government of any State or political subdivision thereof may establish a bumper standard applicable to vehicles or equipment procured for its own use which is not identical to the Federal standard under section 1912 of this title if such requirement imposes an additional or higher standard of performance. (Pub. L. 92–513, title I, § 110, Oct. 20, 1972, 86 Stat. 955.)

REFERENCES IN TEXT

The National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsec. (b) (1), is classified to section 1381 et seq. of this title. Title I of such act, also referred to in subsec. (b) (1), is classified to section 1391 et seq. of this title.

### § 1921. Authorization of appropriations.

There is authorized to be appropriated to carry out this subchapter $5,000,000 for fiscal year ending June 30, 1973; $9,000,000 for the fiscal year ending June 30, 1974; and $10,000,000 for the fiscal year ending June 30, 1975. (Pub. L. 92–513, title I, § 111, Oct. 20, 1972, 86 Stat. 955.)

### § 1922. Annual report.

The Secretary shall report to the Congress and to the President not later than March 31 of each year on the progress in carrying out the purposes of this subchapter. Each such report shall contain a statement of the cost savings that have resulted from the administration of this subchapter, and include such recommendations for further legislative or other action as the Secretary determines may be appropriate. (Pub. L. 92–513, title I, § 112, Oct. 20, 1972, 86 Stat. 955.)

## SUBCHAPTER II.—AUTOMOBILE CONSUMER INFORMATION STUDY

### § 1941. Consumer information study by Secretary.

**(a) Scope of study.**

During the first year after October 20, 1972, the Secretary shall conduct a comprehensive study and investigation of the methods for determining the following characteristics of passenger motor vehicles:

(1) The damage susceptibility of such vehicles.

(2) The degree of crashworthiness of such vehicles.

(3) The characteristics of such vehicles with respect to the ease of diagnosis and repair of mechanical and electrical systems which fail during use or which are damaged in motor vehicle accidents.

**(b) Recommendations.**

After reviewing the methods for determining the characteristics enumerated in subsection (a) of this section, the Secretary shall make specific recommendations for the further development of existing methods or for the development of new methods.

**(c) Dissemination of information to consumers.**

After the study has been completed the Secretary is authorized and directed to devise specific ways in which existing information and information to be developed relating to (1) the characteristics of passenger motor vehicles enumerated in subsection (a) of this section, or (2) vehicle operating costs dependent upon those characteristics (including information obtained pursuant to section 1945 of this title), can be communicated to consumers so as to be of benefit in their passenger motor vehicle purchasing decisions.

**(d) Compilation of information.**

The Secretary shall compile the information described in subsection (c) of this section and furnish it to the public in a simple and readily understandable form in order to facilitate comparison among the various makes and models of passenger motor vehicles with respect to the characteristics enumerated in subsection (a) of this section.

**(e) Insurance premium rate comparisons; establishment of procedures requiring automobile dealers to distribute information to prospective purchasers.**

The Secretary, not later than February 1, 1975, shall by rule establish procedures requiring automobile dealers to distribute to prospective purchasers information developed by the Secretary and provided to the dealer which compares differences in insurance costs for different makes and models of passenger motor vehicles based upon differences in damage susceptibility and crashworthiness. (Pub. L. 92–513, title II, § 201, Oct. 20, 1972, 86 Stat. 956.)

### § 1942. Appointment, compensation, etc., by Secretary of personnel, experts, consultants, and advisory committees to assist in study.

In order to carry out his functions under this subchapter the Secretary is authorized to—

(1) appoint and fix the compensation of such employees as he deems necessary without regard to the provisions of Title 5 governing appointment in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of Title 5, but at rates for individuals not to exceed $100 per diem;

(3) contract with any person for the conduct of research and surveys and the preparation of reports; and

(4) appoint, without regard to the provisions of Title 5 governing appointments in the competitive services, such advisory committees, representative of the divergent interests involved, as he deems appropriate for the purposes of consultation with and advice to the Secretary.

Members of advisory committees appointed under paragraph (4) of this section, other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Secretary, may be compensated at rates to be fixed by the Secretary but not exceeding $100 per day, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently. Members of such advisory committees shall, for the purposes of chapter 11 of Title 18, be deemed to be special Government employees. (Pub. L. 92–513, title II, § 202, Oct. 20, 1972, 86 Stat. 956.)

REFERENCES IN TEXT

The provisions of Title 5 governing appointments in the competitive service, referred to in the text, are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

### § 1943. Requests by Secretary for information from other Federal departments, etc.; compliance; detail of personnel by head of other Federal departments, etc.; reimbursement.

(a) The Secretary may request from any department, agency, or independent instrumentality of the Government any information he deems necessary to carry out his functions under this subchapter; and each such department, agency, or independent instrumentality is authorized and directed to cooperate with the Secretary and furnish such information to the Department of Transportation upon request made by the Secretary

(b) The head of any Federal department, agency, or independent instrumentality may detail, on a reimbursable basis, any personnel of such department, agency, or independent instrumentality to assist in carrying out the duties of the Secretary under this subchapter. (Pub. L. 92–513, title II, § 203, Oct. 20, 1972, 86 Stat. 957.)

### § 1944. Powers of Secretary.

**(a) Conduct of hearings; subpena of witnesses and production of books, records, etc.**

For the purpose of carrying out the provisions of this subchapter, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require,

by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

**(b) Examination of relevant documentary evidence.**

In order to carry out the provisions of this subchapter, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to the study authorized by this subchapter.

**(c) Orders requiring persons to file reports and answer specific questions.**

The Secretary may require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this subchapter. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

**(d) Enforcement of subpenas and orders by district courts; contempt proceedings.**

Any United States district court within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under subsection (a) or subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**(e) Payment of fees and mileage to witnesses.**

Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

**(f) Disclosure of confidential information.**

Any information which is reported to or otherwise obtained by the Secretary or such officer or employee under this section and which contains or relates to a trade secret or other matter referred to in section 1905 of Title 18 shall not be disclosed except to other officers or employees of the Federal Government for their use in carrying out this subchapter. Nothing in the preceding sentence shall authorize the withholding of information by the Secretary (or any officer or employee under his control) from the duly authorized committees of the Congress. (Pub. L. 92–513, title II, § 204, Oct. 20, 1972, 86 Stat. 957.)

**§ 1945. Insurance reports and information.**

**(a) Duty of insurers of passenger motor vehicles.**

Insurers of passenger motor vehicles, or their designated agents, shall, upon request by the Secretary, make such reports and furnish such information as the Secretary may reasonably require to enable him to carry out the purposes of this subchapter.

**(b) Scope of reports and information.**

Such reports and information may include, but shall not be limited to—

(1) accident claim data relating to the type and extent of physical damage and the cost of remedying the damage according to make, model, and model year of passenger motor vehicle, and

(2) accident claim data relating to the type and extent of personal injury according to make, model, and model year of passenger motor vehicle.

**(c) Considerations governing request by Secretary for reports and information.**

In determining the reports and information to be furnished pursuant to subsections (a) and (b) of this section, the Secretary shall—

(1) consider the cost of preparing and furnishing such reports and information;

(2) consider the extent to which such reports and information will contribute to carrying out the purposes of this subchapter; and

(3) consult with such State and insurance regulatory agencies and other agencies and associations, both public and private, as he deems appropriate.

**(d) Voluntary nature of compliance by insurer with request of Secretary.**

The Secretary shall, to the extent possible, obtain such reports and information from the insurers of passenger motor vehicles on a voluntary basis.

**(e) Damage susceptibility, crashworthiness, and damage repair and personal injury cost information.**

Every insurer of passenger motor vehicles shall, upon request by the Secretary, furnish him a description of the extent to which the insurance rates or premiums charged by the insurer for passenger motor vehicles are affected by the damage susceptibility, crashworthiness, and cost of damage repair and personal injury involved relating to each of the various makes and models of passenger motor vehicles. Such insurer shall also furnish the Secretary upon request such information as may be available to such insurer reflecting the effect of the damage susceptibility, crashworthiness, and cost of damage repair and personal injury involved relating to each of the various makes and models of passenger motor vehicles upon risk incurred by insuring each such make and model.

**(f) Dissemination of information by Secretary.**

The Secretary shall not, in disseminating any information received pursuant to this section, disclose the name of, or other identifying information about, any person who may be an insured, a claimant, a passenger, an owner, a driver, an injured person, a witness, or otherwise involved in any motor vehicle crash or collision unless the Secretary has the consent of the persons so named or otherwise identified.

**(g) Time and manner of furnishing information.**

The information required by this section shall be furnished at such times and in such manner as the Secretary shall prescribe by regulation or otherwise. (Pub. L. 92–513, title II, § 205, Oct. 20, 1972, 86 Stat. 958.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1941 of this title.

**§ 1946. Prohibited acts.**

No person shall fail or refuse (1) to furnish the Secretary with the data or information requested by him under this subchapter, or (2) to comply with

rules prescribed by the Secretary under this subchapter. (Pub. L. 92–513, title II, § 206, Oct. 20, 1972, 86 Stat. 959.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1947, 1948 of this title.

**§ 1947. Injunctive relief to restrain violations of information requirements; petition; jurisdiction, notice by Secretary to person against whom action is contemplated for opportunity to present views and achieve compliance; venue; subpenas for witnesses.**

Upon petition by the Attorney General on behalf of the United States, the United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of section 1946 of this title. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views and shall afford him reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief. Paragraphs (3) and (4) of section 1917(c) of this title shall apply to any action under this section in the same manner as they apply to actions under section 1917 of this title. (Pub. L. 92–513, title II, § 207, Oct. 20, 1972, 86 Stat. 959).

CODIFICATION

"Paragraphs (3) and (4) of section 1917(c) of this title", referred to in the text, was in the original "paragraphs (3) and (4) of section 107(b) of this title", and has been editorially changed as the probable intent of Congress.

**§ 1948. Civil penalties for violations of information requirements.**

**(a) Separate nature of violations; maximum amount of penalties.**

Whoever violates section 1946 of this title shall be subject to a civil penalty of not to exceed $1,000 for each violation. A violation of section 1946(c) of this title shall constitute a separate violation with respect to each failure or refusal to comply with a requirement thereunder; except that the maximum civil penalty under this subsection shall not exceed $400,000 for any related series of violations.

**(b) Compromise of penalty by Secretary; determination of amount of penalty or amount of compromised penalty; deduction of amount of penalty.**

Any civil penalty under this section may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

**(c) Venue; subpenas for witnesses.**

Paragraphs (3) and (4) of section 1917(c) of this title shall apply to any action under this section in the same manner as they apply to actions under section 1917 of this title. (Pub. L. 92–513, title II, § 208, Oct. 20, 1972, 86 Stat. 959.)

CODIFICATION

"Paragraphs (3) and (4) of section 1917(c) of this title", referred to in the text, was in the original "paragraphs (3) and (4) of section 107(b) of this title", and has been editorially changed as the probable intent of Congress.

**§ 1949. Authorization of appropriations.**

There are hereby authorized to be appropriated to carry out the provisions of this subchapter $3,000,000 per fiscal year for the fiscal year ending June 30, 1973, and for each of the two succeeding fiscal years. (Pub. L. 92–513, title II, § 209, Oct. 20, 1972, 86 Stat. 959.)

## SUBCHAPTER III.—DIAGNOSTIC INSPECTION DEMONSTRATION PROJECTS

### PART A—STATE PROGRAMS

AMENDMENTS

1974—Pub. L. 93–492, title III, § 301(a)(1), Oct. 27, 1974, 88 Stat. 1485, added heading "Part A—State Programs."

**§ 1961. Powers of Secretary.**

**(a) Establishment of demonstration projects; commencement of inspections.**

The Secretary shall establish motor vehicle diagnostic inspection demonstration projects, inspections under which shall commence not later than January 1, 1974.

**(b) Grants and technical assistance to States; consultations with Administrator of Environmental Protection Agency.**

To carry out the program under this part, the Secretary shall—

(1) make grants in accordance with subsection (c) of this section and furnish technical assistance to States; and

(2) consult with the Administrator of the Environmental Protection Agency.

**(c) Conduct or supervision by States of demonstration projects; nonprofit performance of diagnostic inspection services; limitations on demonstration projects.**

(1) Any demonstration project under this part shall be conducted by, or under supervision of, a State in accordance with the application of the State submitted under section 1963 of this title, and may provide for the performance of diagnostic inspection services either by public agencies or by private organizations, but no person may perform diagnostic inspection services for profit under any such program.

(2) Not less than five nor more than ten demonstration projects may be assisted by the Secretary under this part. No more than 50 per centum of the projects so assisted may permit diagnostic inspection services to be performed under the project by any person who also provides automobile repair services or who is affiliated with, controls, is controlled by, or is under common control with, any person who provides automobile repair services. (Pub. L. 92–513, title III, § 301, Oct. 20, 1972, 86 Stat.

959, amended Pub. L. 93–492, title III, § 301(a)(2), Oct. 27, 1974, 88 Stat. 1485.)

AMENDMENTS

1974—Subsecs. (b), (c). Pub. L. 93–492 substituted "this part" for "this subchapter" wherever appearing.

**§ 1962. Eligibility of States for grants or other assistance; determination by Secretary of requirements for demonstration projects.**

(a) A State may be eligible for grants or other assistance under this part if the Secretary determines on the basis of an application by such State that such State will undertake a motor vehicle diagnostic inspection demonstration project which meets the requirements of subsection (b) of this section.

(b)(1) A motor vehicle diagnostic inspection demonstration project shall be designed, established, and operated to conduct periodic safety inspections of motor vehicles pursuant to criteria established by the Secretary by regulation and emission inspections pursuant to criteria established by the Secretary by regulation in consultation with the Administrator of the Environmental Protection Agency.

(2) Such project shall require an additional inspection of any motor vehicle subject to the demonstration project (as determined by the Secretary)—

(A) whenever the title to such motor vehicle is transferred to another person unless the transfer is for the purpose of resale; and

(B) whenever such motor vehicle sustains substantial damage to any safety-related or emission-related system or subsystem, as prescribed by the Secretary.

(3) To the greatest extent practicable, such inspections shall be conducted so as to provide specific technical diagnoses of each motor vehicle inspected in order to facilitate correction of any component failing inspection.

(4) A demonstration project shall provide for reinspection of vehicles which initially fail to meet the safety and emission standards established for the project after repair.

(5) Each project shall provide to the Secretary information and data relating to the development of diagnostic testing equipment designed to maximize the interchangeability and interface capability of test equipment and vehicles, and information, and data relating to the costs and benefits of such projects, including information and data relating to vehicle-in-use standards, vehicle designs which facilitate or hinder inspection and repair, the standardization of diagnostic systems and test equipment, the capability of the motor vehicle repair industry to correct diagnosed deficiencies or malfunctions and the costs of such repairs, the relative costs and benefits of the project, the efficiency of facility designs employed, recommendations as to feasible reject levels which may be employed, in any such project and such other information and data as the Secretary may require. (Pub. L. 92–513, title III, § 302, Oct. 20, 1972, 86 Stat. 960, amended Pub. L. 93–492, title III, § 301(a)(2), Oct. 27, 1974, 88 Stat. 1485.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–492 substituted "this part" for "this subchapter".

**§ 1963. Application by State for grant or other assistance; form, contents, and manner of application; limitation on amount of grant; time period for availability of financial assistance for inspection costs; retention of equipment by State; manner of payments.**

(a) A grant or other assistance under this part may be obtained upon an application by a State at such time, in such manner, and containing such information as the Secretary prescribes, including information respecting categories of expenditures by the State from financial assistance under this part.

(b) Upon the approval of any such application, the Secretary may make a grant to the State to pay each fiscal year an amount not in excess of 90 per centum of those categories of expenditures for establishing and operating its project which the Secretary approves. Federal financial assistance under this part shall not be available with respect to costs of inspections carried out after June 30, 1976, under such a project. Any equipment purchased with Federal funds may be retained by a State for its inspection activities following the demonstration project with the approval of the Secretary. Payments under this subsection may be made in advance, in installments, or by way of reimbursement. (Pub. L. 92–513, title III, § 303, Oct. 20, 1972, 86 Stat. 961, amended Pub. L. 93–492, title III, § 301(a)(2), Oct. 27, 1974, 88 Stat. 1485.)

AMENDMENTS

1974—Pub. L. 93–492 substituted "this part" for "this subchapter" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title.

PART B—SPECIAL DEMONSTRATION PROJECTS

AMENDMENTS

1974—Pub. L. 93–492, title III, § 301(a)(4), Oct. 27, 1974, 88 Stat. 1485, added heading "Part B—Special Demonstration Projects".

**§ 1963a. Authority of Secretary; establishment of special demonstration project.**

The Secretary shall establish a special motor vehicle diagnostic inspection demonstration project to assist in the rapid development and evaluation of advanced inspection, analysis, and diagnostic equipment suitable for use by the States in standardized high volume inspection facilities and to evaluate the repair characteristics of motor vehicles. Such project shall be designed to facilitate evaluation of repair characteristics by small automotive repair garages. (Pub. L. 92–513, title III, § 311, as added Pub. L. 93–492, title III, § 301(a)(4), Oct. 27, 1974, 88 Stat. 1485.)

PART C—AUTHORIZATION OF APPROPRIATIONS

AMENDMENTS

1974—Pub. L. 93–492, title III, § 301(a)(4), Oct. 27, 1974, 88 Stat. 1485, added heading "Part C—Authorization of Appropriations".

**§ 1964. Authorization of appropriations.**

There is authorized to be appropriated to carry out this subchapter $15,000,000 for the fiscal year ending June 30, 1973; $25,000,000 for the fiscal year ending June 30, 1974; and $35,000,000 for the fiscal

year ending June 30, 1975. Not more than 20 percent of the amount appropriated under this section for any fiscal year may be granted for projects in any one State. (Pub. L. 92–513, title III, § 321, formerly § 304, Oct. 20, 1972, 86 Stat. 861, renumbered Pub. L. 93–492, title III, § 301(a)(3), Oct. 27, 1974, 88 Stat. 1485.)

## SUBCHAPTER IV.—ODOMETER REQUIREMENTS

### § 1981. Congressional findings and declaration of purpose.

The Congress hereby finds that purchasers, when buying motor vehicles, rely heavily on the odometer reading as an index of the condition and value of such vehicle; that purchasers are entitled to rely on the odometer reading as an accurate reflection of the mileage actually traveled by the vehicle; that an accurate indication of the mileage traveled by a motor vehicle assists the purchaser in determining its safety and reliability; and that motor vehicles move in the current of interstate and foreign commerce or affect such commerce. It is therefore the purpose of this subchapter to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers. (Pub. L. 92–513, title IV, § 401, Oct. 20, 1972, 86 Stat. 961.)

EFFECTIVE DATE

Section 412 of Pub. L. 92–513 provided that: "This title (other than section 408(a)) [this subchapter other than section 1988(a) of this title] shall take effect ninety calendar days following the date of enactment of this Act [Oct. 20, 1972]. Section 408(a) [section 1988(a) of this title] shall take effect on the date of enactment of this Act [Oct. 20, 1972]."

REPORT BY SECRETARY ON ODOMETER RELIABILITY AND SECURITY; RECOMMENDATIONS

Section 413 of Pub. L. 92–513 provided that: "One year after the date of enactment of this Act [Oct. 20, 1972], the Secretary shall report to the Congress and to the President on the extent to which the reliability of odometers can be improved, on the technical feasibility of producing odometers which are tamper proof, and on the Secretary's plans and recommendations for future action."

### § 1982. Definitions.

As used in this subchapter—

(1) The term "odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

(2) The term "repair and replacement" means to restore to a sound working condition by replacing the odometer or any part thereof or by correcting what is inoperative.

(3) The term "transfer" means to change ownership by purchase, gift, or any other means.

(Pub. L. 92–513, title IV, § 402, Oct. 20, 1972, 86 Stat. 961.)

EFFECTIVE DATE

Section effective 90 calendar days following Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

### § 1983. Unlawful devices causing odometer to register mileage other than true mileage driven.

It is unlawful for any person to advertise for sale, to sell, to use, or to install or to have installed, any device which causes an odometer to register any mileage other than the true mileage driven. For purposes of this section, the true mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance. (Pub. L. 92–513, title IV, § 403, Oct. 20, 1972, 86 Stat. 962.)

EFFECTIVE DATE

Section effective 90 calendar days following Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

### § 1984. Unlawful change of mileage indicated on odometer.

It is unlawful for any person or his agent to disconnect, reset, or alter the odometer of any motor vehicle with the intent to change the number of miles indicated thereon. (Pub. L. 92–513, title IV, § 404, Oct. 20, 1972, 86 Stat. 962.)

EFFECTIVE DATE

Section effective 90 calendar days following Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

### § 1985. Unlawful operation of motor vehicle with knowledge of disconnected or nonfunctional odometer.

It is unlawful for any person with the intent to defraud to operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional. (Pub. L. 92–513, title IV, § 405, Oct. 20, 1972, 86 Stat. 962.)

EFFECTIVE DATE

Section effective 90 calendar days following Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

### § 1986. Conspiracy to violate odometer requirements.

No person shall conspire with any other person to violate section 1983, 1984, 1985, 1987, or 1988 of this title. (Pub. L. 92–513, title IV, § 406, Oct. 20, 1972, 86 Stat. 962.)

EFFECTIVE DATE

Section effective 90 calendar days following Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

### § 1987. Lawful service, repair, or replacement of odometer; adjustment of mileage; notice of adjustment; unlawful removal or alteration of notice.

Nothing in this subchapter shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left

door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date of which it was repaired or replaced. Any removal or alteration of such notice so affixed shall be unlawful. (Pub. L. 92–513, title IV, § 407, Oct. 20, 1972, 86 Stat. 962.)

EFFECTIVE DATE

Section effective 90 calendar days following Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

**§ 1988. Disclosure requirements upon transfer of ownership of motor vehicle; promulgation of rules; violations.**

(a) Not later than 90 days after October 20, 1972, the Secretary shall prescribe rules requiring any transferor to give the following written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle:

(1) Disclosure of the cumulative mileage registered on the odometer.

(2) Disclosure that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled.

Such rules shall prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained.

(b) It shall be a violation of this section for any transferor to violate any rules under this section or to knowingly give a false statement to a transferee in making any disclosure required by such rules. (Pub. L. 92–513, title IV, § 408, Oct. 20, 1972, 86 Stat. 962.)

EFFECTIVE DATE

Section, except subsec. (a), effective 90 calendar days following Oct. 20, 1972, with such subsec. (a) to take effect on Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

**§ 1989. Civil actions to enforce liability for violations of odometer requirements; amount of damages; jurisdiction; period of limitation.**

(a) Any person who, with intent to defraud, violates any requirement imposed under this subchapter shall be liable in an amount equal to the sum of—

(1) three times the amount of actual damages sustained or $1,500, whichever is the greater; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney fees as determined by the court.

(b) An action to enforce any liability created under subsection (a) of this section, may be brought in a United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises. (Pub. L. 92–513, title IV, § 409, Oct. 20, 1972, 86 Stat. 963.)

EFFECTIVE DATE

Section effective 90 calendar days following Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

**§ 1990. Injunctive relief to restrain violations of odometer requirements; petition; jurisdiction; notice by Secretary to person against whom action is contemplated for opportunity to present views; venue; subpenas for witnesses.**

(a) Upon petition by the Attorney General on behalf of the United States, the United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this subchapter. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(b) Paragraphs (3) and (4) of section 1917(c) of this title shall apply to actions under this section in the same manner as they apply to actions under section 1917 of this title. (Pub. L. 92–513, title IV, § 410, Oct. 20, 1972, 86 Stat. 963.)

CODIFICATION

"Paragraphs (3) and (4) of section 1917(c) of this title", referred to in the text, was in the original "paragraphs (3) and (4) of section 107(b)", and has been editorially changed as the probable intent of Congress.

EFFECTIVE DATE

Section effective 90 calendar days following Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

**§ 1991. State odometer requirements.**

This subchapter does not—

(1) annul, alter, or affect the laws of any State with respect to the disconnecting, altering, or tampering with odometers with the intent to defraud, or

(2) exempt any person subject to the provisions of this subchapter from complying with such laws, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. (Pub. L. 92–513, title IV, § 411, Oct. 20, 1972, 86 Stat. 963.)

EFFECTIVE DATE

Section effective 90 calendar days following Oct. 20, 1972, see section 412 of Pub. L. 92–513, set out as a note under section 1981 of this title.

## SUBCHAPTER V.—IMPROVING AUTOMOTIVE EFFICIENCY

### PART A.[1]—AUTOMOTIVE FUEL ECONOMY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1901 of this title.

**§ 2001. Definitions.**

For purposes of this part:

(1) The term "automobile" means any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

(A) which is rated at 6,000 lbs. gross vehicle weight or less, or

[1] So in original. There are no other parts in this subchapter.

(B) which—

(i) is rated at more than 6,000 lbs. gross vehicle weight but less than 10,000 lbs. gross vehicle weight,

(ii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards under this part are feasible, and

(iii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards will result in significant energy conservation, or is a type of vehicle which the Secretary determines is substantially used for the same purposes as vehicles described in subparagraph (A) of this paragraph.

The Secretary may prescribe such rules as may be necessary to implement this paragraph.

(2) The term "passenger automobile" means any automobile (other than an automobile capable of off-highway operation) which the Secretary determines by rule is manufactured primarily for use in the transportation of not more than 10 individuals.

(3) The term "automobile capable of off-highway operation" means any automobile which the Secretary determines by rule—

(A) has a significant feature (other than 4-wheel drive) which is designed to equip such automobile for off-highway operation, and

(B) either—

(i) is a 4-wheel drive automobile, or

(ii) is rated at more than 6,000 pounds gross vehicle weight.

(4) The term "average fuel economy" means average fuel economy, as determined under section 2003 of this title.

(5) The term "fuel" means gasoline and diesel oil. The Secretary may, by rule, include any other liquid fuel or any gaseous fuel within the meaning of the term "fuel" if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

(6) The term "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under section 2003(d) of this title.

(7) The term "average fuel economy standard" means a performance standard which specifies a minimum level of average fuel economy which is applicable to a manufacturer in a model year.

(8) The term "manufacturer" means any person engaged in the business of manufacturing automobiles. The Secretary shall prescribe rules for determining, in cases where more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer of such automobile for purposes of this part.

(9) The term "manufacturer" (except for purposes of section 2002(c) of this title) means to produce or assemble in the customs territory of the United States, or to import.

(10) The term "import" means to import into the customs territory of the United States.

(11) The term "model type" means a particular class of automobile as determined, by rule, by the EPA Administrator, after consultation and coordination with the Secretary.

(12) The term "model year", with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(13) The term "Secretary" means the Secretary of Transportation.

(14) The term "EPA Administrator" means the Administrator of the Environmental Protection Agency.

(Pub. L. 92–513, title V, § 501, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 901.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2004, 2006, 2012 of this title; title 42 section 6291.

**§ 2002. Average fuel economy standards.**

(a)(1) Except as otherwise provided in paragraph (4) or in subsection (c) or (d) of this section, the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1977 shall not be less than the number of miles per gallon established for such model year under the following table:

| Model year: | Average fuel economy standard (in miles per gallon) |
|---|---|
| 1978 | 18.0. |
| 1979 | 19.0. |
| 1980 | 20.0. |
| 1981 | Determined by Secretary under paragraph (3) of this subsection. |
| 1982 | Determined by Secretary under paragraph (3) of this subsection. |
| 1983 | Determined by Secretary under paragraph (3) of this subsection. |
| 1984 | Determined by Secretary under paragraph (3) of this subsection. |
| 1985 and thereafter. | 27.5. |

(2) Not later than January 15 of each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this part. The review required to be transmitted not later than January 15, 1979, shall include a comprehensive analysis of the program required by this part. Such analysis shall include an assessment of the ability of manufacturers to meet the average fuel economy standard for model year 1985 as specified in paragraph (1) of this subsection, and any legislative recommendations the Secretary or the EPA Administrator may have for improving the program required by this part.

(3) Not later than July 1, 1977, the Secretary shall prescribe, by rule, average fuel economy standards for passenger automobiles manufactured in each of the model years 1981 through 1984. Any such standard shall apply to each manufacturer (except as provided in subsection (c) of this section), and shall be set for each such model year at a level which the Secretary determines (A) is the maximum feasible average fuel economy level, and (B) will result in steady progress toward meeting the average fuel

economy standard established by or pursuant to this subsection for model year 1985.

(4) The Secretary may, by rule, amend the average fuel economy standard specified in paragraph (1) for model year 1985, or for any subsequent model year, to a level which he determines is the maximum feasible average fuel economy level for such model year, except that any amendment which has the effect of increasing an average fuel economy standard to a level in excess of 27.5 miles per gallon, or of decreasing any such standard to a level below 26.0 miles per gallon, shall be submitted to the Congress in accordance with section 6421 of Title 42, and shall not take effect if either House of the Congress disapproves such amendment in accordance with the procedures specified in such section.

(5) For purposes of considering any modification which is submitted to the Congress under paragraph (4), the 5 calendar days specified in section 6421(f)(4)(A) of Title 42 shall be lengthened to 20 calendar days, and the 15 calendar days specified in section 6421(c) and (d) of Title 42 shall be lengthened to 60 calendar days.

(b) The Secretary shall, by rule, prescribe average fuel economy standards for automobiles which are not passenger automobiles and which are manufactured by any manufacturer in each model year which begins more than 30 months after December 22, 1975. Such rules may provide for separate standards for different classes of such automobiles (as determined by the Secretary), and shall [1] be set at a level which the Secretary determines is the maximum feasible average fuel economy level which such manufacturers are able to achieve in each model year to which this subsection applies. Any standard applicable to a model year under this subsection shall be prescribed at least 18 months prior to the beginning of such model year.

(c) On application of a manufacturer who manufactured (whether or not in the United States) fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the application is made, the Secretary may, by rule, exempt such manufacturer from subsection (a) of this section. An application for such an exemption shall be submitted to the Secretary, and shall contain such information as the Secretary may require by rule. Such exemption may only be granted if the Secretary determines that the average fuel economy standard otherwise applicable under subsection (a) of this section is more stringent than the maximum feasible average fuel economy level which such manufacturer can attain. The Secretary may not issue exemptions with respect to a model year unless he establishes, by rule, alternative average fuel economy standards for passenger automobiles manufactured by manufacturers which receive exemptions under this subsection. Such standards may be established for an individual manufacturer, for all automobiles to which this subsection applies, or for such classes of such automobiles as the Secretary may define by rule. Each such standard shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for the manufacturers to which the standard applies. An exemption under this subsection shall apply to a model year only if the manufacturer manufactures (whether or not in the United States) fewer than 10,000 passenger automobiles in such model year.

(d)(1) Any manufacturer may apply to the Secretary for modification of an average fuel economy standard applicable under subsection (a) of this section to such manufacturer for model year 1978, 1979, or 1980. Such application shall contain such information as the Secretary may require by rule, and shall be submitted to the Secretary within 24 months before the beginning of the model year for which such modification is requested.

(2)(A) If a manufacturer demonstrates and the Secretary finds that—

(i) a Federal standards fuel economy reduction is likely to exist for such manufacturer for the model year to which the application relates, and

(ii) such manufacturer applied a reasonably selected technology,

the Secretary shall, by rule, reduce the average fuel economy standard applicable under subsection (a) of this section to such manufacturer by the amount of such manufacturer's Federal standards fuel economy reduction, rounded off to the nearest one-tenth mile per gallon (in accordance with rules of the Secretary). To the maximum extent practicable, prior to making a finding under this paragraph with respect to an application, the Secretary shall request, and the EPA Administrator shall supply, test results collected pursuant to section 2003(d) of this title for all automobiles covered by such application.

(B)(i) If the Secretary does not find that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), he shall deny the application of such manufacturer.

(ii) If the Secretary—

(I) finds that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), and

(II) does not find that such manufacturer applied a reasonably selected technology,

the average fuel economy standard applicable under subsection (a) of this section to such manufacturer shall, by rule, be reduced by an amount equal to the Federal standards fuel economy reduction which the Secretary finds would have resulted from the application of a reasonably selected technology.

(3) For purposes of this subsection:

(A) The term "reasonably selected technology" means a technology which the Secretary determines it was reasonable for a manufacturer to select, considering (i) the Nation's need to improve the fuel economy of its automobiles, and (ii) the energy savings, economic costs, and lead-time requirements associated with alternative technologies practicably available to such manufacturer.

(B) The term "Federal standards fuel economy reduction" means the sum of the applicable fuel economy reductions determined under subparagraph (C).

[1] So in original. Probably should be "such standards shall".

(C) The term "applicable fuel economy reduction" means a number of miles per gallon equal to—

(i) the reduction in a manufacturer's average fuel economy in a model year which results from the application of a category of Federal standards applicable to such model year, and which would not have occurred had Federal standards of such category applicable to model year 1975 remained the only standards of such category in effect, minus

(ii) 0.5 mile per gallon.

(D) Each of the following is a category of Federal standards;

(i) Emissions standards under section 1857f–1 of Title 42, and emissions standards applicable by reason of section 1857f–6a of Title 42.

(ii) Motor vehicle safety standards under the National Traffic and Motor Vehicle Safety Act of 1966.

(iii) Noise emission standards under section 4905 of Title 42.

(iv) Property loss reduction standards under subchapter I of this chapter.

(E) In making the determination under this subparagraph, the Secretary (in accordance with such methods as he shall prescribe by rule) shall assume a production mix for such manufacturer which would have achieved the average fuel economy standard for such model year had standards described in subparagraph (D) applicable to model year 1975 remained the only standards in effect.

(4) The Secretary may, for the purposes of conducting a proceeding under this subsection, consolidate one or more applications filed under this subsection.

(e) For purposes of this section, in determining maximum feasible average fuel economy, the Secretary shall consider—

(1) technological feasibility;

(2) economic practicability;

(3) the effect of other Federal motor vehicle standards on fuel economy; and

(4) the need of the Nation to conserve energy.

(f)(1) The Secretary may, by rule, from time to time, amend any average fuel economy standard prescribed under subsection (a)(3), (b), or (c) of this section, so long as such standard, as amended, meets the requirements of subsection (a)(3), (b), or (c) of this section, as the case may be.

(2) Any amendment prescribed under this section which has the effect of making any average fuel economy standard more stringent shall be—

(A) promulgated, and

(B) if required by paragraph (4) of subsection (a) of this section, submitted to the Congress, at least 18 months prior to the beginning of the model year to which such amendment will apply.

(g) Proceedings under subsection (a)(4) or (d) of this section shall be conducted in accordance with section 553 of Title 5 except that interested persons shall be entitled to make oral as well as written presentations. A transcript shall be taken of any oral presentations. (Pub. L. 92–513, title V, § 502, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 902.)

REFERENCES IN TEXT

The National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsec. (d)(3)(D)(ii), is Pub. L. 89–563, Sept. 9, 1966, 80 Stat. 718, which is classified to section 1381 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2001, 2003, 2004, 2005, 2007, 2008, 2010 of this title.

**§ 2003. Calculation of average fuel economy.**

(a)(1) Average fuel economy for purposes of section 2002 (a) and (c) of this title shall be calculated by the EPA Administrator by dividing—

(A) the total number of passenger automobiles manufactured in a given model year by a manufacturer, by

(B) a sum of terms, each term of which is a fraction created by dividing—

(i) the number of passenger automobiles of a given model type manufactured by such manufacturer in such model year, by

(ii) the fuel economy measured for such model type.

(2) Average fuel economy for purposes of section 2002(b) of this title shall be calculated in accordance with rules of the EPA Administrator.

(b)(1) In calculating average fuel economy under subsection (a)(1) of this section, the EPA Administrator shall separate the total number of passenger automobiles manufactured by a manufacturer into the following two categories:

(A) Passenger automobiles which are domestically manufactured by such manufacturer (plus, in the case of model year 1978 and model year 1979, passenger automobiles which are within the includable base import volume of such manufacturer).

(B) Passenger automobiles which are not domestically manufactured by such manufacturer (and which, in the case of model year 1978 and model year 1979, are not within the includable base import volume of such manufacturer).

The EPA Administrator shall calculate the average fuel economy of each such separate category, and each such category shall be treated as if manufactured by a separate manufacturer for purposes of this part.

(2) For purposes of this subsection:

(A) The term "includable base import volume", with respect to any manufacturer in model year 1978 or 1979, as the case may be, is a number of passenger automobiles which is the lesser of—

(i) the manufacturer's base import volume, or

(ii) the number of passenger automobiles calculated by multiplying—

(I) the quotient obtained by dividing such manufacturer's base import volume by such manufacturer's base base[1] production volume, times

(II) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B) The term "base import volume" means one-half the sum of—

[1] So in original.

(i) the total number of passenger automobiles which were not domestically manufactured by such manufacturer during model year 1974 and which were imported by such manufacturer during such model year, plus

(ii) 133 percent of the total number of passenger automobiles which were not domestically manufactured by such manufacturer during the first 9 months of model year 1975 and which were imported by such manufacturer during such 9-month period.

(C) The term "base production volume" means one-half the sum of—

(i) the total number of passenger automobiles manufactured by such manufacturer during model year 1974, plus

(ii) 133 percent of the total number of passenger automobiles manufactured by such manufacturer during the first 9 months of model year 1975.

(D) For purposes of subparagraphs (B) and (C) of this paragraph any passenger automobile imported during model year 1976, but prior to July 1, 1975, shall be deemed to have been manufactured (and imported) during the first 9 months of model year 1975.

(E) An automobile shall be considered domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada, unless the assembly of such automobile is completed in Canada and such automobile is not imported into the United States prior to the expiration of 30 days following the end of such model year. The EPA Administrator may prescribe rules for purposes of carrying out this subparagraph.

(F) The fuel economy of each passenger automobile which is imported by a manufacturer in model year 1978 or 1979, as the case may be, and which is not domestically manufactured by such manufacturer, shall be deemed to be equal to the average fuel economy of all such passenger automobiles.

(c) Any reference in this part to automobiles manufactured by a manufacturer shall be deemed—

(1) to include all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer; and

(2) to exclude all automobiles manufactured (within the meaning of paragraph (1)) during a model year by such manufacturer which are exported prior to the expiration of 30 days following the end of such model year.

(d)(1) Fuel economy for any model type shall be measured, and average fuel economy of a manufacturer shall be calculated, in accordance with testing and calculation procedures established by the EPA Administrator, by rule. Procedures so established with respect to passenger automobiles (other than for purposes of section 2006 of this title) shall be the procedures utilized by the EPA Administrator for model year 1975 (weighed 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emissions tests conducted under section 1857f–5 of Title 42. The EPA Administrator shall report any measurements of fuel economy and any calculations of average fuel economy to the Secretary.

(2) The EPA Administrator shall, by rule, determine that quantity of any other fuel which is the equivalent of one gallon of gasoline.

(3) Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promlugated not less than 12 months prior to the model year to which such procedures apply.

(e) For purposes of this part (other than section 2006 of this title), any measurement of fuel economy of a model type, and any calculation of average fuel economy of a manufacturer, shall be rounded off to the nearest one-tenth mile per gallon (in accordance with rules of the EPA Administrator).

(f) The EPA Administrator shall consult and coordinate with the Secretary in carrying out his duties under this section. (Pub. L. 92–513, title V, § 503, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2001, 2002, 2004, 2005, 2008 of this title.

### § 2004. Judicial review.

(a) Any person who may be adversely affected by any rule prescribed under section 2001, 2002, 2003, or 2006 of this title may, at any time prior to 60 days after such rule is prescribed (or in the case of an amendment submitted to each House of the Congress under section 2002(a)(4) of this title, at any time prior to 60 days after the expiration of the 60-day period specified in section 2002(a)(5) of this title), file a petition in the United States Court of Appeals for the District of Columbia, or for any circuit wherein such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be forthwith transmitted by the clerk of such court to the officer who prescribed the rule. Such officer shall thereupon cause to be filed in such court the written submissions and other materials in the proceeding upon which such rule was based. Upon the filing of such petition, the court shall have jurisdiction to review the rule in accordance with chapter 7 of Title 5 and to grant appropriate relief as provided in such chapter. Findings of the Secretary under section 2002(d) of this title shall be set aside by the court on review unless such findings are supported by substantial evidence.

(b) If the petitioner applies to the court in a proceeding under subsection (a) of this section for leave to make additional submissions, and shows to the satisfaction of the court that such additional submissions are material and that there were reasonable grounds for the failure to make such submissions in the administrative proceeding, the court may order the Secretary or the EPA Administrator, as the case may be to provide additional opportunity to make such submissions. The Secretary or the EPA Administrator, as the case may be,

may modify or set aside the rule involved or prescribe a new rule by reason of the additional submissions, and shall file any such modified or new rule in the court, together with such additional submissions. The court shall thereafter review such new or modified rule.

(c) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

(d) The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law. (Pub. L. 92–513, title V, § 504, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 908.)

**§ 2005. Information and reports.**

(a)(1) Each manufacturer shall submit a report to the Secretary during the 30-day period preceding the beginning of each model year after model year 1977, and during the 30-day period begining on the 180th day of each such model year. Each such report shall contain (A) a statement as to whether such manufacturer will comply with average fuel economy standards under section 2002 of this title applicable to the model year for which such report is made; (B) a plan which describes the steps the manufacturer has taken or intends to take in order to comply with such standards; and (C) such other information as the Secretary may require.

(2) Whenever a manufacturer determines that a plan submitted under paragraph (1) which he stated was sufficient to insure compliance with applicable average fuel economy standards is not sufficient to insure such compliance, he shall submit a report to the Secretary containing a revised plan which specifies any additional measures which such manufacturer intends to take in order to comply with such standards, and a statement as to whether such revised plan is sufficient to insure such compliance.

(3) The Secretary shall prescribe rules setting forth the form and content of the reports required under paragraphs (1) and (2).

(b)(1) For the purpose of carrying out the provisions of this part, the Secretary or the EPA Administrator, or their duly designated agents, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, the EPA Administrator, or such agents deem advisable. The Secretary or the EPA Administrator may require, by general or specal orders that any person—

(A) file, in such form as the Secretary or EPA Administrator may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary or the EPA Administrator under this part, and

(B) provide the Secretary, the EPA Administrator, or their duly designated agents, access to (and for the purpose of examination, the right to copy) any documentary evidence of such person which is relevant to any function of the Secretary or the EPA Administrator under this part.

Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary or the EPA Administrator within such reasonable period as either may prescribe.

(2) The district courts of the United States for a judicial district in the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a duly authorized subpena or order of the Secretary, the EPA Administrator, or a duly designated agent of either, issued under paragraph (1), issue an order requiring compliance with such subpena or order. Any failure to obey such an order of the court may be treated by such court as a contempt thereof.

(3) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c)(1) Every manufacturer shall establish and maintain such records, make such reports, conduct such tests, and provide such items and information as the Secretary or the EPA Administrator may, by rule, reasonably require to enable the Secretary or the EPA Administrator to carry out their duties under this part and under any rules prescribed pursuant to this part. Such manufacturer shall, upon request of a duly designated agent of the Secretary or the EPA Administrator who presents appropriate credentials, permit such agent, at reasonable times and in a reasonable manner, to enter the premises of such manufacturer to inspect automobiles and appropriate books, papers, records, and documents. Such manufacturer shall make available all of such items and information in accordance with such reasonable rules as the Secretary or the EPA Administrator may prescribe.

(2) The district courts of the United States may, if a manufacturer refuses to accede to any rule or reasonable request made under paragraph (1), issue an order requiring compliance with such requirement or request. Any failure to obey such an order of the court may be treated by such court as a contempt thereof.

(d)(1) The Secretary and the EPA Administrator shall each disclose any information obtained under this part (other than section 2003(d) of this title) to the public in accordance with section 552 of Title 5 except that information may be withheld from disclosure under subsection (b)(4) of such section only if the Secretary or the EPA Administrator, as the case may be, determines that such information, if disclosed, would result in significant competitive damage. Any matter described in section 552(b)(4) relevant to any administrative or judicial proceeding under this part may be disclosed in such proceeding.

(2) Measurements and calculations under section 2003(d) of this title shall be made available to the public in accordance with section 552 of Title 5 without regard to subsection (b) of such section. (Pub. L. 92–513, title V, § 505, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 908.)

**§ 2006. Labeling.**

(a)(1) Except as otherwise provided in paragraph (2), each manufacturer shall cause to be

affixed, and each dealer shall cause to be maintained, on each automobile manufactured in any model year after model year 1976, in a prominent place, a label—

(A) indicating—

(i) the fuel economy of such automobile,

(ii) the estimated annual fuel cost associated with the operation of such automobile, and

(iii) the range of fuel economy of comparable automobiles (whether or not manufactured by such manufacturer),

as determined in accordance with rules of the EPA Administrator,

(B) containing a statement that written information (as described in subsection (b)(1) of this section) with respect to the fuel economy of other automobiles manufactured in such model year (whether or not manufactured by such manufacturer) is available from the dealer in order to facilitate comparison among the various model types, and

(C) containing any other information authorized or required by the EPA Administrator which relates to information described in subparagraph (A) or (B).

(2) With respect to automobiles—

(A) for which procedures established in the EPA and FEA Voluntary Fuel Labeling Program for Automobiles exist on December 22, 1975, and

(B) which are manufactured in model year 1976 and at least 90 days after December 22, 1975,

each manufacturer shall cause to be affixed, and each dealer shall cause to be maintained, in a prominent place, a label indicating the fuel economy of such automobile, in accordance with such procedures.

(3) The form and content of the labels required under paragraphs (1) and (2), and the manner in which such labels shall be affixed, shall be prescribed by the EPA Administrator by rule. The EPA Administrator may permit a manufacturer to comply with this paragraph by permitting such manufacturer to disclose the information required under this subsection on the label required by section 1232 of this title.

(b)(1) The EPA Administrator shall compile and prepare a simple and readily understandable booklet containing data on fuel economy of automobiles manufactured in each model year. Such booklet shall also contain information with respect to estimated annual fuel costs, and may contain information with respect to geographical or other differences in estimated annual fuel costs. The Administrator of the Federal Energy Administration shall publish and distribute such booklets.

(2) The EPA Administrator, not later than July 31, 1976, shall prescribe rules requiring dealers to make available to prospective purchasers information compiled by the EPA Administrator under paragraph (1).

(c)(1) A violation of subsection (a) of this section shall be treated as a violation of section 1232 of this title. For purposes of the Federal Trade Commission Act (other than sections 45(m) and 57a of this title, a violation of subsection (a) of this section shall be treated as an unfair or deceptive act or practice in or affecting commerce.

(2) As used in this section, the term "dealer" has the same meaning as such term has in section 1231(e) of this title except that in applying such term to this section, the term "automobile" has the same meaning as such term has in section 2001(1) of this title.

(d) Any disclosure with respect to fuel economy or estimated annual fuel cost which is required to be made under the provisions of this section shall not create an express or implied warranty under State or Federal law that such fuel economy will be achieved, or that such cost will not be exceeded, under conditions of actual use.

(e) In carrying out his duties under this section, the EPA Administrator shall consult with the Federal Trade Commission, the Secretary, and the Federal Energy Administrator. (Pub. L. 92–513, title V, § 506, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 910.)

REFERENCE IN TEXT

The Federal Trade Commission Act, referred to in subsec. (c)(1), is classified to sections 41 to 46 and 47 to 58 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2003, 2004, 2007, 2009 of this title.

### § 2007. Unlawful conduct.

The following conduct is unlawful:

(1) the failure of any manufacturer to comply with any average fuel economy standard applicable to such manufacturer under section 2002 of this title (other than section 2002(b) of this title),

(2) the failure of any manufacturer to comply with any average fuel economy standard applicable to such manufacturer under section 2002(b) of this title, or

(3) the failure of any person (A) to comply with any provision of this part applicable to such person (other than section 2002, 2006(a), 2010, or 2011 of this title), or (B) to comply with any standard, rule, or order applicable to such person which is issued pursuant to such a provision.

(Pub. L. 92–513, title V, § 507, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 911.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2008 of this title.

### § 2008. Civil penalty.

(a)(1) If average fuel economy calculations reported under section 2003(d) of this title indicate that any manufacturer has violated section 2007 (1) or (2) of this title, then (unless further measurements of fuel economy, further calculations of average fuel economy, or other information indicates there is no violation of section 2007 (1) or (2) of this title) the Secretary shall commence a proceeding under paragraph (2) of this subsection. The results of such further measurements, further calculations, and any such other information, shall be published in the Federal Register.

(2) If, on the record after opportunity for agency hearing, the Secretary determines that such manufacturer has violated section 2007 (1) or (2) of this title, or that any person has violated section 2007

(3) of this title, the Secretary shall assess the penalties provided for under subsection (b) of this section. Any interested person may participate in any proceeding under this paragraph.

(3)(A)(i) Whenever the average fuel economy of the passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard established under section 2002 (a) or (c) of this title (determined without regard to any adjustment under section 2002(d) of this title), such manufacturer shall be entitled to a credit, calculated under clause (ii), which shall be—

(I) deducted from the amount of any civil penalty which has been or may be assessed against such manufacturer for a violation of section 2007 (1) of this title occurring in the model year immediately prior to the model year in which such manufactured exceeds such applicable average fuel economy standard, and

(II) to the extent that such credit is not deducted pursuant to subclause (I), deducted from the amount of any civil penalty assessed against such manufacturer for a violation of section 2007 (1) of this title occurring in the model year immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

(ii) The amount of credit to which a manufacturer is entitled under clause (i) shall be equal to—

(I) $5 for each tenth of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer in the model year in which the credit is earned pursuant to clause (i) exceeds the applicable average fuel economy standard established under section 2002 (a) or (c) of this title, multiplied by

(II) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B)(i) Whenever the average fuel economy of a class of automobiles which are not passenger automobiles and which are manufactured by a manufacturer in a particular model year exceeds an average fuel economy standard applicable to automobiles of such class under section 2002(b) of this title, such manufacturer shall be entitled to a credit, calculated under clause (ii), which shall be—

(I) deducted from the amount of any civil penalty which has been or may be assessed against such manufacturer for a violation of section 2007 (2) of this title, occurring in the model year immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(II) to the extent that such credit is not deducted pursuant to subclause (I), deducted from the amount of any such civil penalty assessed against such manufacturer for a violation of section 2007(2) of this title occurring in the model year immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

(ii) The amount of credit to which a manufacturer is entitled under clause (i) shall be equal to—

(I) $5 for each tenth of a mile per gallon by which the average fuel economy of the automobiles of such class manufactured by such manufacturer in the model year in which the credit is earned pursuant to clause (i) exceeds the applicable average fuel economy standard established under section 2002(b) of this title, multiplied by

(II) the total number of automobiles of such class manufactured by such manufacturer during such model year.

(C) Whenever a civil penalty has been assessed and collected under this section from a manufacturer who is entitled to a credit under this paragraph with respect to such civil penalty, the Secretary of the Treasury shall refund to such manufacturer the amount of credit to which such manufacturer is so entitled, except that the amount of such refund shall not exceed the amount of the civil penalty so collected.

(D) The Secretary may prescribe rules for purposes of carrying out the provisions of this paragraph.

(b)(1)(A) Any manufacturer whom the Secretary determines under subsection (a) of this section to have violated a provision of section 2007(1) of this title,[1] shall be liable to the United States for a civil penalty equal to (i) $5 for each tenth of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer during such model year is exceeded by the applicable average fuel economy standard established under section 2002(a) and (c) of this title, multiplied by (ii) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B) Any manufacturer whom the Secretary determines under subsection (a) of this section to have violated section 2007(2) of this title shall be liable to the United States for a civil penalty equal to (i) $5 for each tenth of a mile per gallon by which the applicable average fuel economy standard exceeds the average fuel economy of automobiles to which such standard applies, and which are manufactured by such manufacturer during the model year in which the violation occurs, multiplied by (ii) the total number of automobiles to which such standard applies and which are manufactured by such manufacturer during such model year.

(2) Any person whom the Secretary determines under subsection (a) to have violated a provision of section 2007(3) of this title shall be liable to the United States for a civil penalty of not more than $10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this paragraph.

(3) The amount of such civil penalty shall be assessed by the Secretary by written notice. The Secretary shall have the discretion to compromise, modify, or remit, with and without conditions, any civil penalty assessed under this subsection against any person, except that any civil penalty assessed for a violation of section 2007 (1) or (2) of this title may be so compromised, modified, or emitted only to the extent—

[1] The words "in a model year" probably should appear immediately preceding the comma.

(A) necessary to prevent the insolvency or bankruptcy of such manufacturer,

(B) such manufacturer shows that the violation of section 2007 (1) or (2) of this title resulted from an act of God, a strike, or a fire, or

(C) the Federal Trade Commission has certified that modification of such penalty is necessary to prevent a substantial lessening of competition, as determined under paragraph (4).

The Attorney General shall collect any civil penalty for which a manufacturer is liable under this subsection in a civil action under subsection (c)(2) of this section (unless the manufacturer pays such penalty to the Secretary).

(4) Not later than 30 days after a determination by the Secretary under subsection (a)(2) of this section that a manufacturer has violated section 2007(1) or (2) of this title, such manufacturer may apply to the Federal Trade Commission for a certification under this paragraph. If the manufacturer shows and the Federal Trade Commission determines that modification of the civil penalty for which such manufacturer is otherwise liable is necessary to prevent a substantial lessening of competition in that segment of the automobile industry subject to the standard with respect to which such penalty was assessed, the Commission shall so certify. The certification shall specify the maximum amount that such penalty may be reduced. To the maximum extent practicable, the Commission shall render a decision with respect to an application under this paragraph not later than 90 days after the application is filed with the Commission. A proceeding under this paragraph shall not have the effect of delaying the manufacturer's liability under this section for a civil penalty for more than 90 days after such application is filed, but any payment made before a decision of the Commission under this paragraph becomes final shall be paid to the court in which the penalty is collected, and shall (except as otherwise provided in paragraph (5)), be held by such court, until 90 days after such decision becomes final (at which time it shall be paid into the general fund of the Treasury).

(5) Whenever a civil penalty has been assessed and collected from a manufacturer under this section, and is being held by a court in accordance with paragraph (4), and the Secretary subsequently determines to modify such civil penalty pursuant to paragraph (3)(C) the Secretary shall direct the court to remit the appropriate amount of such penalty to such manufacturer.

(6) A claim of the United States for a civil penalty assessed against a manufacturer under subsection (b)(1) of this section shall, in the case of the bankruptcy or insolvency of such manufacturer, be subordinate to any claim of a creditor of such manufacturer which arises from an extension of credit before the date on which the judgment in any collection action under this section becomes final (without regard to paragraph (4)).

(c)(1) Any interested person may obtain review of a determination (A) of the Secretary pursuant to which a civil penalty has been assesed under subsection (b) of this section, or (B) of the Federal Trade Commission under subsection (b)(4) of this section, in the United States Court of Appeals for the District of Columbia, or for any circuit wherein such person resides or has his principal place of business. Such review may be obtained by filing a notice of appeal in such court within 30 days after the date of such determination, and by simultaneously sending a copy of such notice by certified mail to the Secretary or the Federal Trade Commission, as the case may be. The Secretary or the Commission, as the case may be, shall promptly file in such court a certified copy of the record upon which such determination was made. Any such determination shall be reviewed in accordance with chapter 7 of Title 5.

(2) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Attorney General shall recover the amount for which the manufacturer is liable in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. (Pub. L. 92–513, title V, § 508, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 911.)

**§ 2009. State laws.**

(a) Whenever an average fuel economy standard established under this part is in effect, no State or political subdivision of a State shall have authority to adopt or enforce any law or regulation relating to fuel economy standards or average fuel economy standards applicable to automobiles covered by such Federal standard.

(b) Whenever any requirement under section 2006 of this title is in effect with respect to any automobile, no State or political subdivision of a State shall have authority to adopt or enforce any law or regulation with respect to the disclosure of fuel economy of such automobile, or of fuel cost associated with the operation of such automobile, if such law or regulation is not identical with such requirement.

(c) Nothing in this section shall be construed to prevent any State or political subdivision thereof from establishing requirements with respect to fuel economy of automobiles procured for its own use. (Pub. L. 92–513, title V, § 509, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 914.)

**§ 2010. Use of fuel efficient passenger automobiles by Federal government.**

(a) The President shall, within 120 days after December 22, 1975, promulgate rules which shall require that all passenger automobiles acquired by all executive agencies in each fiscal year which begins after December 22, 1975, achieve a fleet average fuel economy for such year not less than—

(1) 18 miles per gallon, or

(2) the average fuel economy standard applicable under section 2002(a) of this title for the model year which includes January 1 of such fiscal year,

whichever is greater.

(b) As used in this section:

(1) The term "fleet average fuel economy" means (A) the total number of passenger auto-

mobiles acquired in a fiscal year to which this section applies by all executive agencies (excluding passenger automobiles designed to perform combat related missions for the Armed Forces or designed to be used in law enforcement work or emergency rescue work), divided by (B) a sum of terms, each term of which is a fraction created by dividing—

(i) the number of passenger automobiles so acquired of a given model type, by

(ii) the fuel economy of such model type.

(2) The term "executive agency" has the same meaning as such term has for purposes of section 105 of Title 5.

(3) The term "acquired" means leased for a period of 60 continuous days or more, or purchased.

(Pub. L. 92–513, title V, § 510, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 915.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2007 of this title.

§ 2011. Retrofit devices.

(a) The Federal Trade Commission shall establish a program for systematically examining fuel economy representations made with respect to retrofit devices. Whenever the Commission has reason to believe that any such representation may be inaccurate, it shall request the EPA Administrator to evaluate, in accordance with subsection (b) of this section, the retrofit device with respect to which such representation was made.

(b)(1) Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a) of this section, or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d) of this section, any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit device are accurate.

(2) If under paragraph (1) the EPA Administrator tests, or causes to be tested, any retrofit device upon the application of a manufacturer of such device, such manufacturer shall supply, at his own expense, one or more samples of such device to the Administrator and shall be liable for the costs of testing which are incurred by the Administrator. The procedures for testing retrofit devices so supplied may include a requirement for preliminary testing by a qualified independent testing laboratory, at the expense of the manufacturer of such device.

(c) The EPA Administrator shall publish in the Federal Register a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) the effect of any retrofit device on fuel economy;

(2) the effect of any such device on emissions of air pollutants; and

(3) any other information which the Administrator determines to be relevant in evaluating such device.

Such summary and conclusions shall also be submitted to the Secretary and the Federal Trade Commission.

(d) Within 180 days after December 22, 1975, the EPA Administrator shall, by rule, establish—

(1) testing and other procedures for evaluating the extent to which retrofit devices affect fuel economy and emissions of air pollutants, and

(2) criteria for evaluating the accuracy of fuel economy representations made with respect to retrofit devices.

(e) For purposes of this section the term "retrofit device" means any component, equipment, or other device—

(1) which is designed to be installed in or on an automobile (as an addition to, as a replacement for, or through alteration or modification of, any original component, equipment, or other device); and

(2) which any manufacturer, dealer, or distributor of such device represents will provide higher fuel economy than would have resulted with the automobile as originally equipped,

as determined under rules of the Administrator. Such term also includes a fuel additive for use in an automobile. (Pub. L. 92–513, title V, § 511, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 915.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2007 of this title.

§ 2012. Reports to Congress.

(a) Within 180 days after December 22, 1975, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings and containing conclusions and recommedations with respect to (1) a requirement that each new automobile be equipped with a fuel flow instrument reading directly in miles per gallon, and (2) the most feasible means of equipping used automobiles with such instruments. Such report shall include an examination of the effectiveness of such instruments in promoting voluntary reductions in fuel consumption, the cost of such instruments, means of encouraging automobile purchasers to voluntarily purchase automobiles equipped with such instruments, and any other factor bearing on the cost and effectiveness of such instruments and their use.

(b)(1) Within 180 days after December 22, 1975, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings and containing conclusions and recommedations with respect to whether or not electric vehicles and other vehicles not consuming fuel (as defined in the first sentence of section 2001(5) of this title) should be covered by this part. Such report shall include an examination of the extent to which any such vehicle should be included under the provisions of this part, the manner in which energy requirements of such vehicles may be compared with energy requirements of fuel-consuming vehicles, the extent to which inclusion of such vehicles would stimulate their production and introduction into commerce, and any recommendations for legislative action.

(2) As used in this subsection, the term "electric vehicle" means a vehicle powered primarily by an

electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current. (Pub. L. 92–513, title V, § 512, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat 916.)

## Chapter 47.—CONSUMER PRODUCT SAFETY [NEW]

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2219 of this title.

### § 2051. Congressional findings and declaration of purpose.

(a) The Congress finds that—

(1) an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce;

(2) complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to

anticipate risks and to safeguard themselves adequately;

(3) the public should be protected against unreasonable risks of injury associated with consumer products;

(4) control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers;

(5) existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injury is inadequate; and

(6) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this chapter.

(b) The purposes of this chapter are—

(1) to protect the public against unreasonable risks of injury associated with consumer products;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(Pub. L. 92–573, § 2, Oct. 27, 1972, 86 Stat. 1207.)

EFFECTIVE DATE

Section 34 of Pub. L. 92–573 provided that:

"This Act [this chapter] shall take effect on the sixtieth day following the date of its enactment [Oct. 27, 1972], except—

"(1) sections 4 and 32 [sections 2053 and 2081 of this title] shall take effect on the date of enactment of this Act [Oct. 27, 1972], and

"(2) section 30 [section 2079 of this title] shall take effect on the later of (A) 150 days after the date of enactment of this Act [Oct. 27, 1972], or (B) the date on which at least three members of the Commission first take office."

SHORT TITLE

Section 1 of Pub. L. 92–573 provided that: "This Act [enacting this chapter, amending sections 5314 and 5315 of Title 5, and enacting provisions set out as notes under this section] may be cited as the 'Consumer Product Safety Act'."

SEPARABILITY OF PROVISIONS

Section 33 of Pub. L. 92–573 provided that: "If any provision of this Act [this chapter], or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act [this chapter], or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

§ 2052. Definitions.

(a) For purposes of this chapter:

(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,

(B) tobacco and tobacco products,

(C) motor vehicles or motor vehicle equipment (as defined by sections 1391 (3) and (4) of this title),

(D) economic poisons (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act),

(E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of Title 26 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of Title 26), or any component of any such article,

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 1301 of Title 49),

(G) boats which could be subjected to safety regulation under the Federal Boat Safety Act of 1971; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 1452(8) of Title 46) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph,

(H) drugs, devices, or cosmetics (as such terms are defined in sections 321 (g), (h), and (i) of Title 21), or

(I) food. The term "food", as used in this subparagraph means all "food", as defined in section 321(f) of Title 21, including poultry and poultry products (as defined in section 453 (e) and (f) of Title 21), meat, meat food products (as defined in section 601(j) of Title 21), and eggs and egg products (as defined in section 1033 of Title 21).

See sections 2079(d) and 2080 of this title, for limitations on Commission's authority to regulate certain consumer products.

(2) The term "consumer product safety rule" means a consumer products safety standard described in section 2056(a) of this title, or a rule under this chapter declaring a consumer product a banned hazardous product.

(3) The term "risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(4) The term "manufacturer" means any person who manufactures or imports a consumer product.

(5) The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(6) The term "retailer" means a person to whom a consumer product is delivered or sold for pur-

poses of sale or distribution by such person to a consumer.

(7)(A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(8) The term "manufactured" means to manufacture, produce, or assemble.

(9) The term "Commission" means the Consumer Product Safety Commission, established by section 2053 of this title.

(10) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(11) The terms "to distribute in commerce" and "distribution in commerce" mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(12) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(13) The terms "import" and "importation" include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(14) The term "United States", when used in the geographic sense, means all of the States (as defined in paragraph (10)).

(b) A common carrier, contract carrier, or freight forwarder shall not, for purposes of this chapter, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder. (Pub. L. 92–573, § 3, Oct. 27, 1972, 86 Stat. 1208.)

REFERENCES IN TEXT

The definition of economic poisons in the Federal Insecticide, Fungicide, and Rodenticide Act, referred to subsec. (a)(1)(D), is set out in section 135(a) of Title 7, Agriculture.

The Federal Boat Safety Act of 1971, referred to in subsec. (a)(1)(G), is classified to section 1451 et seq. of Title 46, Shipping.

Title 52 of the Revised Statutes, referred to in subsec. (a)(1)(G), is classified to section 361 et seq. of Title 46, Shipping.

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

## § 2053. Consumer Product Safety Commission.

**(a) Establishment; chairman.**

An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as Chairman. The Chairman, when so designated, shall act as Chairman until the expiration of his term of office as Commissioner. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

**(b) Term; vacancies.**

(1) Except as provided in paragraph (2), (A) the Commissioners first appointed under this section shall be appointed for terms ending three, four, five, six, and seven years, respectively, after October 27, 1972, the term of each to be designated by the President at the time of nomination; and (B) each of their successors shall be appointed for a term of seven years from the date of the expiration of the term for which his predecessor was appointed.

(2) Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of this term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

**(c) Restrictions on Commissioner's outside activities.**

Not more than three of the Commissioner shall be affiliated with the same political party. No individual (1) in the employ of, or holding any official relation to, any person engaged in selling or manufacturing consumer products, or (2) owning stock or bonds of substantial value in a person so engaged, or (3) who is in any other manner pecuniarily interested in such a person, or in a substantial supplier of such a person, shall hold the office of Commissioner. A Commissioner may not engage in any other business, vocation, or employment.

**(d) Quorum; seal; vice chairman.**

No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but three members of the Commission shall constitute a quorum for the transaction of business. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

**(e) Offices.**

The Commission shall maintain a principal office and such field offices as it deems necessary and may meet and exercise any of its powers at any other place.

**(f) Functions of the Chairman.**

(1) The Chairman of the Commission shall be the principal executive officer of the Commission, and he

shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (A) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman), (B) the distribution of business among personnel appointed and supervised by the Chairman and among administrative units of the Commission, and (C) the use and expenditure of funds.

(2) In carrying out any of his functions under the provisions of this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(g) Executive Director; officers and employees.

(1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(2) The Chairman, subject to subsection (f)(2) of this section, may employ such other officers and employees (including attorneys) as are necessary in the execution of the Commission's functions. No full-time officer or employee of the Commission who was at any time during the 12 months preceding the termination of his employment with the Commission compensated at a rate in excess of the annual rate of basic pay in effect for grade GS–14 of the General Schedule, shall accept employment or compensation from any manufacturer subject to this chapter, for a period of 12 months after terminating employment with the Commission. (Pub. L. 92–573, § 4(a)–(g), Oct. 27, 1972, 86 Stat. 1210, 1211.)

REFERENCE IN TEXT

The General Schedule, referred to in subsec. (g), is set out under section 5332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Oct. 27, 1972, see section 34(1) of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2052 of this title.

**§ 2054. Product safety information and research; Injury Information Clearinghouse.**

(a) The Commission shall—

(1) maintain an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data, and information, relating to the causes and prevention of death, injury, and illness associated with consumer products; and

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products as it deems necessary.

(b) The Commission may—

(1) conduct research, studies, and investigations on the safety of consumer products and on improving the safety of such products;

(2) test consumer products and develop product safety test methods and testing devices; and

(3) offer training in product safety investigation and test methods, and assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

(c) In carrying out its functions under this section, the Commission may make grants or enter into contracts for the conduct of such functions with any person (including a governmental entity).

(d) Whenever the Federal contribution for any information, research, or development activity authorized by this chapter is more than minimal, the Commission shall include in any contract, grant, or other arrangement for such activity, provisions effective to insure that the rights to all information, uses, processes, patents, and other developments resulting from that activity will be made available to the public without charge on a nonexclusive basis. Nothing in this subsection shall be construed to deprive any person of any right which he may have had, prior to entering into any arrangement referred to in this subsection, to any patent, patent application, or invention. (Pub. L. 92–573, § 5, Oct. 27, 1972, 86 Stat. 1211.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2055. Public disclosure of information.**

(a)(1) Nothing contained in this chapter shall be deemed to require the release of any information described by subsection (b) of section 552 of Title 5 or which is otherwise protected by law from disclosure to the public.

(2) All information reported to or otherwise obtained by the Commission or its representative under this chapter which information contains or relates to a trade secret or other matter referred to in section 1905 of Title 18 shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this chapter shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees of the Congress.

(b)(1) Except as provided by paragraph (2) of this subsection, not less than 30 days prior to its public disclosure of any information obtained under this chapter, or to be disclosed to the public in connection therewith (unless the Commission finds out that the public health and safety requires a lesser period of notice), the Commission shall, to the extent practicable, notify, and provide a summary of the information to, each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such

information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this chapter. If the Commission finds that, in the administration of this chapter, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information.

(2) Paragraph (1) (except for the last sentence thereof) shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an action under section 2061 of this title (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of section 2068 of this title (relating to prohibited acts), or (B) information in the course of or concerning any administrative or judicial proceeding under this chapter.

(c) The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk of injury associated with such product. (Pub. L. 92–573, § 6, Oct. 27, 1972, 86 Stat. 1212.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2074 of this title.

**§ 2056. Consumer product safety standards.**

**(a) Types of requirements.**

The Commission may by rule, in accordance with this section and section 2058 of this title, promulgate consumer product safety standards. A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product.

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product. The requirements of such a standard (other than requirements relating to labeling, warnings, or instructions) shall, whenever feasible, be expressed in terms of performance requirements.

**(b) Proceedings for development of standards; notice; development period.**

A proceeding for the development of a consumer product safety standard under this chapter shall be commenced by the publication in the Federal Register of a notice which shall—

(1) identify the product and the nature of the risk of injury associated with the product;

(2) state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury;

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceeding; and

(4) include an invitation for any person, including any State or Federal agency (other than the Commission), within 30 days after the date of publication of the notice (A) to submit to the Commission an existing standard as the proposed consumer product safety standard or (B) to offer to develop the proposed consumer product safety standard.

An invitation under paragraph (4) (B) shall specify a period of time, during which the standard is to be developed, which shall be a period ending 150 days after the publication of the notice, unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.

**(c) Publications of proposed safety rules developed from existing standards.**

If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under this chapter, would eliminate or reduce the unreasonable risk of injury associated with the product, then it may, in lieu of accepting an offer pursuant to subsection (d) of this section, publish such standard as a proposed consumer product safety rule.

**(d) Offers to develop proposed standards; Commission's contribution to development costs; regulations.**

(1) Except as provided by subsection (c) of this section, the Commission shall accept one, and may accept more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (b) (4) (B) of this section, if it determines that the offeror is technically competent, is likely to develop an appropriate standard within the period specified in the invitation under subsection (b) of this section, and will comply with regulations of the Commission under paragraph (3) of this subsection. The Commission shall publish in the Federal Register the name and address of each person whose offer it accepts, and a summary of the terms of such offer as accepted.

(2) If an offer is accepted under this subsection, the Commission may agree to contribute to the offeror's cost in developing a proposed consumer product safety standard, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings.

(3) The Commission shall prescribe regulations governing the development of proposed consumer

product safety standards by persons whose offers are accepted under paragraph (1). Such regulations shall include requirements—

(A) that standards recommended for promulgation be suitable for promulgation under this chapter, be supported by test data or such other documents or materials as the Commission may reasonably require to be developed, and (where appropriate) contain suitable test methods for measurement of compliance with such standards;

(B) for notice and opportunity by interested persons (including representatives of consumers and consumer organizations) to participate in the development of such standards;

(C) for the maintenance of records, which shall be available to the public, to disclose the course of the development of standards recommended for promulgation, the comments and other information submitted by any person in connection with such development (including dissenting views and comments and information with respect to the need for such recommended standards), and such other matters as may be relevant to the evaluation of such recommended standards; and

(D) that the Commission and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records relevant to the development of such recommended standards or to the expenditure of any contribution of the Commission for the development of such standards.

**(e) Development of proposed safety rules by Commission; publication; independent development of proposals; development period; publication.**

(1) If the Commission has published a notice of proceeding as provided by subsection (b) of this section and has not, within 30 days after the date of publication of such notice, accepted an offer to develop a proposed consumer product safety standard, the Commission may develop a proposed consumer product safety rule and publish such proposed rule.

(2) If the Commission accepts an offer to develop a proposed consumer product safety standard, the Commission may not, during the development period (specified in paragraph (3)) for such standard—

(A) publish a proposed rule applicable to the same risk of injury associated with such product, or

(B) develop proposals for such standard or contract with third parties for such development, unless the Commission determines that no offeror whose offer was accepted is making satisfactory progress in the development of such standard.

In any case in which the sole offeror whose offer is accepted under subsection (d)(1) of this section is the manufacturer, distributor, or retailer of a consumer product proposed to be regulated by the consumer product safety standard, the Commission may independently proceed to develop proposals for such standard during the development period.

(3) For purposes of paragraph (2), the development period for any standard is a period (A) beginning on the date on which the Commission first accepts an offer under subsection (d)(1) of this section for the development of a proposed standard, and (B) ending on the earlier of—

(i) the end of the period specified in the notice of proceeding (except that the period specified in the notice may be extended if good cause is shown and the reasons for such extension are published in the Federal Register), or

(ii) the date on which it determines (in accordance with such procedures as it may by rule prescribe) that no offeror whose offer was accepted is able and willing to continue satisfactorily the development of the proposed standard which was the subject of the offer, or

(iii) the date on which an offeror whose offer was accepted submits such a recommended standard to the Commission.

**(f) Withdrawal of notice; proposed rules; publication.**

Not more than 210 days after its publication of a notice of proceeding pursuant to subsection (b) of this section (which time may be extended by the Commission by a notice published in the Federal Register stating good cause therefor), the Commission shall publish in the Federal Register a notice withdrawing such notice of proceeding or publish a proposed rule which either proposes a product safety standard applicable to any consumer product subject to such notice, or proposes to declare any such subject product a banned hazardous consumer product. (Pub. L. 92–573, § 7, Oct. 27, 1972, 86 Stat. 1212.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2052, 2058, 2059, 2060 of this title.

**§ 2057. Banned hazardous products.**

Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable risk of injury; and

(2) no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may propose and, in accordance with section 2058 of this title, promulgate a rule declaring such product a banned hazardous product. (Pub. L. 92–573, § 8, Oct. 27, 1972, 86 Stat. 1215.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2058, 2059, 2060 of this title.

**§ 2058. Administrative procedure governing promulgation of consumer product safety rules.**

**(a) Promulgation; withdrawal of notice of proceeding.**

(1) Within 60 days after the publication under section 2056 (c), (e)(1), or (f) of this title or section 2057 of this title of a proposed consumer product safety rule respecting a risk of injury associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the risk of injury associated with such product if it makes the findings required under subsection (c) of this section, or

(B) withdraw by rule the applicable notice of proceeding if it determines that such rule is not (i) reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, or (ii) in the public interest;

except that the Commission may extend such 60-day period for good cause shown (if it publishes its reasons therefor in the Federal Register).

(2) Consumer product safety rules which have been proposed under section 2056 (c), (e)(1), or (f) of this title or section 2057 of this title shall be promulgated pursuant to section 553 of Title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

**(b) Expression of risk of injury which standard is designed to eliminate or reduce.**

A consumer product safety rule shall express in the rule itself the risk of injury which the standard is designed to eliminate or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this chapter.

**(c) Findings for inclusion in rules; required findings.**

(1) Prior to promulgating a consumer product safety rule, the Commission shall consider, and shall make appropriate findings for inclusion in such rule with respect to—

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

(2) The Commission shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule)—

(A) that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(B) that the promulgation of the rule is in the public interest; and

(C) in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such products.

**(d) Effective dates for rules and standards; stockpiling.**

(1) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. The effective date of a consumer products safety standard under this chapter shall be set at a date at least 30 days after the date of promulgation unless the Commission for good cause shown determines that an earlier effective date is in the public interest. In no case may the effective date be set at a date which is earlier than the date of promulgation. A consumer product safety standard shall be applicable only to consumer products manufactured after the effective date.

(2) The Commission may by rule prohibit a manufacturer of a consumer product from stockpiling any product to which a consumer product safety rule applies, so as to prevent such manufacturer from circumventing the purpose of such consumer product safety rule. For purposes of this paragraph, the term "stockpiling" means manufacturing or importing a product between the date of promulgation of such consumer product safety rule and its effective date at a rate which is significantly greater (as determined under the rule under this paragraph) than the rate at which such product was produced or imported during a base period (prescribed in the rule under this paragraph) ending before the date of promulgation of the consumer product safety rule.

**(e) Amendment and revocation of rules.**

The Commission may by rule amend or revoke any consumer product safety rule. Such amendment or revocation shall specify the date on which it is to take effect which shall not exceed 180 days from the date the amendment or revocation is published unless the Commission finds for good cause shown that a later effective date is in the public interest and publishes its reasons for such finding. Where an amendment involves a material change in a consumer product safety rule, sections 2056 and 2057 of this title, and subsections (a) through (d) of this section shall apply. In order to revoke a consumer product safety rule, the Commission shall publish a proposal to revoke such rule in the Federal Register, and allow oral and written presentations in accordance with subsection (a)(2) of this section. It may revoke such rule only if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the products. Section 2060 of this title shall apply to any amendment of a consumer product safety rule which involves a material change and to any revocation of a consumer product safety rule, in the same manner and to the same extent as such section applies to the Commission's action in promulgating such a rule. (Pub. L. 92–573, § 9, Oct. 27, 1972, 86 Stat. 1215.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2056, 2057, 2060, 2068 of this title.

**§ 2059. Petition for consumer product safety rule.**

**(a) Filing by interested persons.**

Any interested person, including a consumer or consumer organization, may petition the Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule.

**(b) Contents of petition.**

Such petition shall be filed in the principal office of the Commission and shall set forth (1) facts which it is claimed establish that a consumer product safety rule or an amendment or revocation thereof is necessary, and (2) a brief description of the substance of the consumer product safety rule or amendment thereof which it is claimed should be issued by the Commission.

**(c) Hearings; investigation.**

The Commission may hold a public hearing or may conduct such investigation or proceeding as it deems appropriate in order to determine whether or not such petition should be granted.

**(d) Grant or denial of petition.**

Within 120 days after filing of a petition described in subsection (b) of this section, the Commission shall either grant or deny the petition. If the Commission grants such petition, it shall promptly commence an appropriate proceeding under section 2056 or 2057 of this title. If the Commission denies such petition it shall publish in the Federal Register its reasons for such denial.

**(e) Civil action.**

(1) If the Commission denies a petition made under this section (or if it fails to grant or deny such petition within the 120-day period) the petitioner may commence a civil action in a United States district court to compel the Commission to initiate a proceeding to take the action requested. Any such action shall be filed within 60 days after the Commission's denial of the petition, or (if the Commission fails to grant or deny the petition within 120 days after filing the petition) within 60 days after the expiration of the 120-day period.

(2) If the petitioner can demonstrate to the satisfaction of the court by a preponderance of evidence in a de novo proceeding before such court, that the consumer product presents an unreasonable risk of injury, and that the failure of the Commission to initiate a rule-making proceeding under section 2056 or 2057 of this title unreasonably exposes the petitioner or other consumers to a risk of injury presented by the consumer product, the court shall order the Commission to initiate the action requested by the petitioner.

(3) In any action under this subsection, the district court shall have no authority to compel the Commission to take any action other than the initiation of a rule-making proceeding in accordance with section 2056 or 2057 of this title.

**(f) Nature of remedy.**

The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

**(g) Petitions filed after October 27, 1975.**

Subsection (e) of this section shall apply only with respect to petitions filed more than 3 years after October 27, 1972. (Pub. L. 92–573, § 10, Oct. 27, 1972, 86 Stat. 1217.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2060. Judicial review of consumer product safety rules.**

**(a) Petition by persons adversely affected, consumers, or consumer organizations.**

Not later than 60 days after a consumer product safety rule is promulgated by the Commission, any person adversely affected by such rule, or any consumer or consumer organization, may file a petition with the United States court of appeals for the District of Columbia or for the circuit in which such person, consumer, or organization resides or has his principal place of business for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The Commission shall transmit to the Attorney General, who shall file in the court, the record of the proceedings on which the Commission based its rule, as provided in section 2112 of Title 28. For purposes of this section, the term "record" means such consumer product safety rule; any notice or proposal published pursuant to section 2056, 2057, or 2058 of this title; the transcript required by section 2058(a)(2) of this title of any oral presentation; any written submission of interested parties; and any other information which the Commission considers relevant to such rule.

**(b) Additional data, views, or arguments.**

If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

**(c) Jurisdiction; substantial evidence to support administrative findings.**

Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction

to review the consumer product safety rule in accordance with chapter 7 of Title 5, and to grant appropriate relief, including interim relief, as provided in such chapter. The consumer product safety rule shall not be affirmed unless the Commission's findings under section 2058(c) of this title are supported by substantial evidence on the record taken as a whole.

**(d) Supreme Court review.**

The judgment of the court affirming or setting aside, in whole or in part, any consumer product safety rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of Title 28.

**(e) Other remedies.**

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law. (Pub. L. 92–573, § 11, Oct. 27, 1972, 86 Stat. 1218.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2058 of this title.

**§ 2061. Imminent hazards.**

**(a) Filing of action.**

The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b)(2) of this section, or (2) against any person who is a manufacturer, distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this chapter. As used in this section, and hereinafter in this chapter, the term "imminently hazardous consumer product" means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

**(b) Relief; product condemnation and seizure.**

(1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and (in the case of an action under subsection (a)(2) of this section) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1) of this section, the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

**(c) Consumer product safety rule.**

Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

**(d) Consultation with Product Safety Advisory Council.**

(1) Prior to commencing an action under subsection (a) of this section, the Commission may consult the Product Safety Advisory Council (established under section 2077 of this title) with respect to its determination to commence such action, and request the Council's recommendations as to the type of temporary or permanent relief which may be necessary to protect the public.

(2) The Council shall submit its recommendations to the Commission within one week of such request.

(3) Subject to paragraph (2), the Council may conduct such hearing or offer such opportunity for the presentation of views as it may consider necessary or appropriate.

**(e) Jurisdiction and venue; process; subpena.**

(1) An action under subsection (a)(2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving substantially similar consumer products are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all other parties in interest.

**(f) Employment of attorneys by Commission.**

Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it. (Pub. L. 92–573, § 12, Oct. 27, 1972, 86 Stat. 1218.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2055, 2066 of this title.

**§ 2062. New consumer products.**

(a) The Commission may, by rule, prescribe procedures for the purpose of insuring that the manufacturer of any new consumer product furnish notice and a description of such a product to the Commission before its distribution in commerce.

(b) For purposes of this section, the term "new consumer product" means a consumer product which incorporates a design, material, or form of energy exchange which (1) has not previously been used substantially in consumer products and (2) as to which there exists a lack of information adequate to determine the safety of such product in use by consumers. (Pub. L. 92–573, § 13, Oct. 27, 1972, 86 Stat. 1219.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2063. Product certification and labeling.**

(a)(1) Every manufacturer of a product which is subject to a consumer product safety standard under this chapter and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or private labeler issuing the certificate; and shall include the date and place of manufacture.

(2) In the case of a consumer product for which there is more than one manufacturer or more than one private labeler, the Commission may by rule designate one or more of such manufacturers or one or more of such private labelers (as the case may be) as the persons who shall issue the certificate required by paragraph (1) of this subsection, and may exempt all other manufacturers of such product or all other private labelers of the product (as the case may be) from the requirement under paragraph (1) to issue a certificate with respect to such product.

(b) The Commission may by rule prescribe reasonable testing programs for consumer products which are subject to consumer product safety standards under this chapter and for which a certificate is required under subsection (a) of this section. Any test or testing program on the basis of which a certificate is issued under subsection (a) of this section may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests or testing programs.

(c) The Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the rule)—

(1) The date and place of manufacture of any consumer product.

(2) A suitable identification of the manufacturer of the consumer product, unless the product bears a private label in which case it shall identify the private labeler and shall also contain a code mark which will permit the seller of such product to identify the manufacturer thereof to the purchaser upon his request.

(3) In the case of a consumer product subject to a consumer product safety rule, a certification that the product meets all applicable consumer product safety standards and a specification of the standards which are applicable.

Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product. The Commission may, in appropriate cases, permit information required under paragraphs (1) and (2) of this subsection to be coded. (Pub. L. 92–573, § 14, Oct. 27, 1972, 86 Stat. 1220.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2066, 2068 of this title.

**§ 2064. Substantial product hazards.**

**(a) Definition.**

For purposes of this section, the term "substantial product hazard" means—

(1) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

**(b) Noncompliance with applicable consumer product safety rules; product defects; notice to Commission by manufacturer, distributor, or retailer.**

Every manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule; or

(2) contains a defect which could create a substantial product hazard described in subsection (a)(2) of this section,

shall immediately inform the Commission of such failure to comply or of such defect, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

**(c) Public notice of defect or failure to comply; mail notice.**

If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, the Commission may order the manufacturer or any distribu-

tor or retailer of the product to take any one or more of the following actions:

(1) To give public notice of the defect or failure to comply.

(2) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.

(3) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order.

**(d) Repair; replacement; refunds; action plan.**

If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to take whichever of the following actions the person to whom the order is directed elects:

(1) To bring such product into conformity with the requirements of the applicable consumer product safety rule or to repair the defect in such product.

(2) To replace such product with a like or equivalent product which complies with the applicable consumer product safety rule or which does not contain the defect.

(3) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (A) at the time of public notice under subsection (c) of this section, or (B) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking action under whichever of the preceding paragraphs of this subsection under which such person has elected to act. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection.

**(e) Reimbursement.**

(1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d) of this section, and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (c) or (d) of this section with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, distributor, or retailer of such product for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

**(f) Hearing.**

An order under subsection (c) or (d) of this section may be issued only after an opportunity for a hearing in accordance with section 554 of Title 5 except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative). (Pub. L. 92–573, § 15, Oct. 27, 1972, 86 Stat. 1221.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2066, 2068, 2073 of this title.

**§ 2065. Inspection and recordkeeping.**

(a) For purposes of implementing this chapter, or rules or orders prescribed under this chapter, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, or (B) any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) to inspect, at reasonable times and in a reasonable manner such conveyance or those areas of such factory, warehouse, or establishment where such products are manufactured, held, or transported and which may relate to the safety of such products. Each such inspection shall be commenced and completed with reasonable promptness.

(b) Every person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this chapter, or to determine compliance with rules or orders prescribed under this chapter. Upon request of an officer or employee duly designated by the Commission, every such manufacturer, private labeler, or distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or distributor has acted or is acting in compliance with this chapter and rules under this chapter. (Pub. L. 92–573, § 16, Oct. 27, 1972, 86 Stat. 1222.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2066. Imported products.**

**(a) Refusal of admission.**

Any consumer product offered for importation into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) shall be refused admission into such customs territory if such product—

(1) fails to comply with an applicable consumer product safety rule;

(2) is not accompanied by a certificate required by section 2063 of this title, or is not labeled in accordance with regulations under section 2063 (c) of this title;

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 2061 of this title;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 2064(a) (2) of this title); or

(5) is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g) of this section.

**(b) Samples.**

The Secretary of the Treasury shall obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. Except for those owners or consignees who are or have been afforded an opportunity for a hearing in a proceeding under section 2061 of this title with respect to an imminently hazardous product, the owner or consignee of the product shall be afforded an opportunity by the Commission for a hearing in accordance with section 554 of Title 5 with respect to the importation of such products into the customs territory of the United States. If it appears from examination of such samples or otherwise that a product must be refused admission under the terms of subsection (a) of this section, such product shall be refused admission, unless subsection (c) of this section applies and is complied with.

**(c) Modification.**

If it appears to the Commission that any consumer product which may be refused admission pursuant to subsection (a) of this section can be so modified that it need not (under the terms of paragraphs (1) through (4) of subsection (a) of this section) be refused admission, the Commission may defer final determination as to the admission of such product and, in accordance with such regulations as the Commission and the Secretary of the Treasury shall jointly agree to, permit such product to be delivered from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

**(d) Supervision of modifications.**

All actions taken by an owner or consignee to modify such product under subsection (c) of this section shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding satisfactorily to modify such product, it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 2071(b) of this title if it is not so redelivered.

**(e) Product destruction.**

Products refused admission into the customs territory of the United States under this section must be exported, except that upon application, the Secretary of the Treasury may permit the destruction of the product in lieu of exportation. If the owner or consignee does not export the product within a reasonable time, the Department of the Treasury may destroy the product.

**(f) Payment of expenses occasioned by refusal of admission.**

All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in this section (the amount of such expenses to be determined in accordance with regulations of the Secretary of the Treasury) and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

**(g) Importation conditioned upon manufacturer's compliance.**

The Commission may, by rule, condition the importation of a consumer product on the manufacturer's compliance with the inspection and recordkeeping requirements of this chapter and the Commission's rules with respect to such requirements. (Pub. L. 92–573, § 17, Oct. 27, 1972, 86 Stat. 1223.)

REFERENCES IN TEXT

General headnote 2 to the Tariff Schedules of the United States, referred to in subsec. (a), is set forth in section 1202(2) of Title 19, Customs Duties.

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2067. Exports.**

This chapter shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless such consumer product is in fact distributed in commerce for use in the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this chapter shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States. (Pub. L. 92–573, § 18, Oct. 27, 1972, 86 Stat. 1224.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2068. Prohibited acts.**

(a) It shall be unlawful for any person to—

(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this chapter;

(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this chapter;

(3) fail or refuse to permit access to or copying of records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this chapter or rule thereunder;

(4) fail to furnish information required by section 2064(b) of this title;

(5) fail to comply with an order issued under section 2064(c) or (d) of this title (relating to notification, and to repair, replacement, and refund);

(6) fail to furnish a certificate required by section 2063 of this title or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 2063(c) of this title (relating to labeling); or

(7) fail to comply with any rule under section 2058(d)(2) of this title (relating to stockpiling).

(b) Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 2063(a) of this title to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule. (Pub. L. 92–573, § 19, Oct. 27, 1972, 86 Stat. 1224.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2055, 2069, 2070, 2071 of this title.

**§ 2069. Civil penalties.**

(a)(1) Any person who knowingly violates section 2068 of this title shall be subject to a civil penalty not to exceed $2,000 for each such violation. Subject to paragraph (2), a violation of section 2068(a)(1), (2), (4), (5), (6), or (7) of this title shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations. A violation of section 2068(a)(3) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 2068(a) of this title—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(b) Any civil penalty under this section may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(c) As used in the first sentence of subsection (a)(1) of this section, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. (Pub. L. 92–573, § 20, Oct. 27, 1972, 86 Stat. 1225.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2070. Criminal penalties.**

(a) Any person who knowingly and willfully violates section 2068 of this title after having received notice of noncompliance from the Commission shall be fined not more than $50,000 or be imprisoned not more than one year, or both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 2068 of this title, and who has knowledge of notice of noncompliance received by the corporation from the Commission, shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a) of this section. (Pub. L. 92–573, § 21, Oct. 27, 1972, 86 Stat. 1225.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2071. Injunctive enforcement and seizure.**

(a) The United States district courts shall have jurisdiction to restrain any violation of section 2068 of this title, or to restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule, or both. Such actions may be brought by the Commission (with the concurrence of the Attorney General) or by the Attorney General in any United States district court

for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Any consumer product which fails to conform to an applicable consumer product safety rule when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any United States district court within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving substantially similar consumer products are pending in courts of two or more judicial districts they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest upon notice to all other parties in interest. (Pub. L. 92–573, § 22, Oct. 27, 1972, 86 Stat. 1225.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2066 of this title.

**§ 2072. Suits for damages by persons injured.**

(a) Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, subject to the provisions or section 1331 of Title 28 as to the amount in controversy, and shall recover damages sustained, and the cost of suit, including a reasonable attorney's fee, if considered appropriate in the discretion of the court.

(b) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law. (Pub. L. 92–573, § 23, Oct. 27, 1972, 86 Stat. 1226.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2073. Private enforcement.**

Any interested person may bring an action in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 2064 of this title, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commission, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this chapter. In any action under this section, such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing party. (Pub. L. 92–573, § 24, Oct. 27, 1972, 86 Stat. 1226.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2074. Private remedies.**

**(a) Liability at common law or under State statute not relieved by compliance.**

Compliance with consumer product safety rules or other rules or orders under this chapter shall not relieve any person from liability at common law or under State statutory law to any other person.

**(b) Evidence of Commission's inaction inadmissible in actions relating to consumer products.**

The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

**(c) Public information.**

Subject to sections 2055(a)(2) and 2055(b) of this title but notwithstanding section 2055(a)(1) of this title, (1) any accident or investigation report made under this chapter by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (2) all reports on research projects, demonstration projects, and other related activities shall be public information. (Pub. L. 92–573, § 25, Oct. 27, 1972, 86 Stat. 1227.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2075. State standards.**

**(a) State compliance to Federal standards.**

Whenever a consumer product safety standard under this chapter is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

**(b) Consumer product safety requirements which impose performance standards more stringent than Federal standards.**

Nothing in this section shall be construed to prevent the Federal Government or the government of

any State or political subdivision thereof from establishing a safety requirement applicable to a consumer product for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

**(c) Exemptions.**

Upon application of a State or political subdivision thereof, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) of this section (under such conditions as it may impose) a proposed safety standard or regulation described in such application, where the proposed standard or regulation (1) imposes a higher level of performance than the Federal standard, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce. (Pub. L. 92–573, § 26, Oct. 27, 1972, 86 Stat. 1227.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub L. 92–573, set out as a note under section 2051 of this title.

**§ 2076. Additional functions of Consumer Product Safety Commission.**

**(a) Authority to conduct hearings or other inquiries.**

The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same manner. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

**(b) Commission powers.**

The Commission shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of Title 31;

(7) to initiate, prosecute, defend, or appeal any court action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction, through its own legal representative with the concurrence of the Attorney General or through the Attorney General; and

(8) to delegate any of its functions or powers, other than the power to issue subpenas under paragraph (3), to any officer or employee of the Commission.

**(c) Noncompliance with subpena or Commission order; contempt.**

Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission with the concurrence of the Attorney General or by the Attorney General, in case of refusal to obey a subpena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

**(d) Disclosure of information.**

No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

**(e) Performance and technical data.**

The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this chapter, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necssary to carry out the purposes of this chapter.

**(f) Purchase of consumer products by Commission.**

For purposes of carrying out this chapter, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

**(g) Contract authority.**

The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this chapter.

**(h) Research, development, and testing facilities.**

The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this chapter.

**(i) Recordkeeping; audit.**

(1) Each recipient of assistance under this chapter pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Commission by rule shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the

project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under this chapter under other than competitive bidding procedures.

**(j) Report to President and Congress.**

The Commission shall prepare and submit to the President and the Congress on or before October 1 of each year a comprehensive report on the administration of this chapter for the preceding fiscal year. Such report shall include—

(1) a thorough appraisal, including statistical analyses, estimates, and long-term projections, of the incidence of injury and effects to the population resulting from consumer products, with a breakdown, insofar as practicable, among the various sources of such injury;

(2) a list of consumer product safety rules prescribed or in effect during such year;

(3) an evaluation of the degree of observance of consumer product safety rules, including a list of enforcement actions, court decisions, and compromises of alleged violations, by location and company name;

(4) a summary of outstanding problems confronting the administration of this chapter in order of priority;

(5) an analysis and evaluation of public and private consumer product safety research activities;

(6) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter;

(7) the extent to which technical information was disseminated to the scientific and commercial communities and consumer information was made available to the public;

(8) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this chapter, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties;

(9) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission; and

(10) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this chapter.

**(k) Budget estimates and requests; legislative recommendations; testimony; comments on legislation.**

(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. (Pub. L. 92–573, § 27, Oct. 27, 1972, 86 Stat. 1227.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2081 of this title.

## § 2077. Product Safety Advisory Council.

**(a) Establishment; membership.**

The Commission shall establish a Product Safety Advisory Council which it may consult before prescribing a consumer product safety rule or taking other action under this chapter. The Council shall be appointed by the Commission and shall be composed of fifteen members, each of whom shall be qualified by training and experience in one or more of the fields applicable to the safety of products within the jurisdiction of the Commission. The Council shall be constituted as follows:

(1) five members shall be selected from governmental agencies including Federal, State, and local governments;

(2) five members shall be selected from consumer product industries including at least one representative of small business; and

(3) five members shall be selected from among consumer organizations, community organizations, and recognized consumer leaders.

**(b) Meetings.**

The Council shall meet at the call of the Commission, but not less often than four times during each calendar year.

**(c) Proposal of consumer product safety rules.**

The Council may propose consumer product safety rules to the Commission for its consideration and may function through subcommittees of its members. All proceedings of the Council shall be public, and a record of each proceeding shall be available for public inspection.

**(d) Compensation; travel pay.**

Members of the Council who are not officers or employees of the United States shall, while attending meetings or conferences of the Council or while otherwise engaged in the business of the Council, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5. Payments

under this subsection shall not render members of the Council officers or employees of the United States for any purpose. (Pub. L. 92–573, § 28, Oct. 27, 1972, 86 Stat. 1230).

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (d), is set out under section 5332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2061 of this title.

**§ 2078. Cooperation with States and other Federal agencies.**

(a) The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this chapter. In implementing such program the Commission may—

(1) accept from any State or local authorities engaged in activities relating to health, safety, or consumer protection assistance in such functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this chapter which such States or localities may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

(2) commission any qualified officer or employee of any State or local agency as an officer of the Commission for the purpose of conducting examinations, investigations, and inspections.

(b) In determining whether such proposed State and local programs are appropriate in implementing the purposes of this chapter, the Commission shall give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this chapter. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

(d) The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Bureau of Standards, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission. (Pub. L. 92–573, § 29, Oct. 27, 1972, 86 Stat. 1230.)

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

**§ 2079. Transfers of functions.**

(a) The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act and the Poison Prevention Packaging Act of 1970 are transferred to the Commission. The functions of the Administrator of the Environmental Protection Agency and of the Secretary of Health, Education, and Welfare under the Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970, to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956, are transferred to the Commission.

(d) A risk of injury which is associated with consumer products and which could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated by the Commission only in accordance with the provisions of those Acts.

(e)(1)(A) All personnel, property, records, obligations, and commitments, which are used primarily with respect to any function transferred under the provisions of subsections (a), (b) and (c) of this section shall be transferred to the Commission, except those associated with fire and flammability research in the National Bureau of Standards. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(B) Any commissioned officer of the Public Health Service who upon the day before the effective date of this section, is serving as such officer primarily in the performance of functions transferred by this Act to the Commission, may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Commission subject to subparagraph (A) of this paragraph, under the terms prescribed in paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970.

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or

allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(f) For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency or department. (Pub. L. 92–573, § 30, Oct. 27, 1972, 86 Stat. 1231.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsecs. (a) and (d), is classified to section 1261 et seq. of this title.

The Poison Prevention Packaging Act of 1970, referred to in subsecs. (a) and (d), is classified to section 1471 et seq. of this title.

The Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970, referred to in subsec. (a), means the Acts amended by Pub. L. 91–601, § 7(b)–(f), Dec. 30, 1970, 84 Stat. 1673. Such enumerated subsecs. (b)–(f) of Pub. L. 91–601 enacted section 135(z)(2)(i) of Title 7, Agriculture, and sections 343(n), 352(p), and 362(f) of Title 21, Food and Drugs.

The Flammable Fabrics Act, referred to in subsecs. (b) and (d), is classified to section 1191 et seq. of this title.

The Act of August 2, 1956, referred to in subsec. (c), is classified to section 1211 et seq. of this title.

For the effective date of this section or, alternatively, the time or date this section takes effect, referred to in subsec. (a)(1)(B), (2), (3), and (4), see effective date note hereunder.

Paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970, referred to in subsec. (e)(1)(B), are pars. (3) through (8)(A) of section 15(b) of Pub. L. 91–604, which is set out as a note under section 215 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective on the later of (A) 150 days after Oct. 27, 1972, or (B) the date on which at least three members of the Consumer Product Safety Commission first take office, see section 34(2) of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2052, 2081 of this title.

### § 2080. Limitations on Consumer Product Safety Commission's jurisdiction.

The Commission shall have no authority under this chapter to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970; the Atomic Energy Act of 1954; or the Clean Air Act. The Commission shall have no authority under this chapter to regulate any risk of injury associated with electronic product radiation emitted from an electronic product (as such terms are defined by section 263c(1) and (2) of Title 42) if such risk of injury may be subjected to regulation under subpart 3 of part F of title III of the Public Health Service Act. (Pub. L. 92–573, § 31, Oct. 27, 1972, 86 Stat. 1232.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in text, is classified to section 651 et seq. of Title 29, Labor.

The Atomic Energy Act of 1954, referred to in text, is classified to section 2011 et seq. of Title 42, The Public Health and Welfare.

The Clean Air Act, referred to in text, is classified to section 1857 et seq. of Title 42, The Public Health and Welfare.

Subpart 3 of part F of title III of the Public Health Service Act, referred to in text, is classified to section 263b et seq. of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective on the 60th day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2052 of this title.

### § 2081. Authorization of appropriations.

(a) There are hereby authorized to be appropriated for the purpose of carrying out the provisions of this chapter (other than the provisions of section 2076(h) of this title which authorize the planning and construction of research, development, and testing facilities), and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 2079 of this title, not to exceed—

(1) $55,000,000 for the fiscal year ending June 30, 1973;

(2) $59,000,000 for the fiscal year ending June 30, 1974; and

(3) $64,000,000 for the fiscal year ending June 30, 1975.

(b)(1) There are authorized to be appropriated such sums as may be necessary for the planning and construction of research, development and testing facilities described in section 2076(h) of this title; except that no appropriation shall be made for any such planning or construction involving an expenditure in excess of $100,000 if such planning or construction has not been approved by resolutions adopted in substantially the same form by the Committee on Interstate and Foreign Commerce of the House of Representatives, and by the Committee on Commerce of the Senate. For the purpose of securing consideration of such approval the Commission shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

(A) a brief description of the facility to be planned or constructed;

(B) the location of the facility, and an estimate of the maximum cost of the facility;

(C) a statement of those agencies, private and public, which will use such facility, together with the contribution to be made by each such agency toward the cost of such facility; and

(D) a statement of justification of the need for such facility.

(2) The estimated maximum cost of any facility approved under this subsection as set forth in the prospectus may be increased by the amount equal to the percentage increase, if any, as determined by the Commission, in construction costs, from the date of the transmittal of such prospectus to Congress, but in no event shall the increase authorized by this paragraph exceed 10 per centum of such estimated maximum cost. (Pub. L. 92–573, § 32, Oct. 27, 1972, 86 Stat. 1233.)

EFFECTIVE DATE

Section effective on Oct. 27, 1972, see section 34(1) of Pub. L. 92–573, set out as a note under section 2051 of this title.

## Chapter 48.—HOBBY PROTECTION [NEW]

Sec.
2101. Marking requirements.
(a) Political items.
(b) Coins and other numismatic items.
(c) Rules and regulations.
(d) Exemption.
2102. Private enforcement.
2103. Enforcement by Federal Trade Commission.
2104. Imports.
2105. Application of other laws.
2106. Definitions.

### § 2101. Marking requirements.

(a) Political items.

The manufacture in the United States, or the importation into the United States, for introduction into or distribution in commerce of any imitation political item which is not plainly and permanently marked with the calendar year in which such item was manufactured, is unlawful and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act.

(b) Coins and other numismatic items.

The manufacture in the United States, or the importation into the United States, for introduction into or distribution in commerce of any imitation numismatic item which is not plainly and permanently marked "copy", is unlawful and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act.

(c) Rules and regulations.

The Federal Trade Commission shall prescribe rules for determining the manner and form in which items described in subsection (a) or (b) of this section shall be permanently marked.

(d) Exemption.

Subsections (a) and (b), and regulations under subsection (c) of this section, shall not apply to any common carrier or contract carrier or freight forwarder with respect to an imitation political item or imitation numismatic item received, shipped, delivered, or handled by it for shipment in the ordinary course of its business. (Pub. L. 93–167, § 2, Nov. 29, 1973, 87 Stat. 686.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is classified to section 41 et seq. of this title.

EFFECTIVE DATE

Section 8 of Pub. L. 93–167 provided that: "This Act [this chapter] shall apply only to imitation political items and imitation numismatic items manufactured after the date of enactment of this Act [Nov. 29, 1973]."

SHORT TITLE

Section 1 of Pub. L. 93–167 provided: "That this Act [this chapter] may be cited as the 'Hobby Protection Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2102, 2104 of this title.

### § 2102. Private enforcement.

If any person violates section 2101 (a) or (b) of this title or a rule under section 2101(c) of this title, any interested person may commence a civil action for injunctive relief restraining such violation, and for damages, in any United States District Court for a district in which the defendant resides or has an agent. In any such action, the court may award the costs of the suit, including reasonable attorneys' fees. (Pub. L. 93–167, § 3, Nov. 29, 1973, 87 Stat. 686.)

EFFECTIVE DATE

Section applicable only to imitation political items and imitation numismatic items manufactured after Nov. 29, 1973, see section 8 of Pub. L. 93–167, set out as a note under section 2101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2103 of this title.

### § 2103. Enforcement by Federal Trade Commission.

(a) Except as provided in section 2102 of this title, this chapter shall be enforced by the Federal Trade Commission under the Federal Trade Commission Act.

(b) The Commission shall prevent any person from violating the provisions of this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade

Commission Act were incorporated into and made a part of this chapter; and any such person violating the provisions of this chapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this chapter. (Pub. L. 93–167, § 4, Nov. 29, 1973, 87 Stat. 686.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is classified to section 41 et seq. of this title.

EFFECTIVE DATE

Section applicable only to imitation political items and imitation numismatic items manufactured after Nov. 29, 1973, see section 8 of Pub. L. 93–167, set out as a note under section 2101 of this title.

### § 2104. Imports.

Any item imported into the United States in violation of section 2101 (a) or (b) of this title or regulations under section 2101(c) of this title shall be subject to seizure and forfeiture under the customs laws. (Pub. L. 93–167, § 5, Nov. 29, 1973, 87 Stat. 687).

EFFECTIVE DATE

Section applicable only to imitation political items and imitation numismatic items manufactured after Nov. 29, 1973, see section 8 of Pub. L. 93–167, set out as a note under section 2101 of this title.

### § 2105. Application of other laws.

The provisions of this chapter are in addition to, and not in substitution for or limitation of, the provisions of any other law of the United States or of the law of any State. (Pub. L. 93–167, § 6, Nov. 29, 1973, 87 Stat. 687.)

EFFECTIVE DATE

Section applicable only to imitation political items and imitation numismatic items manufactured after Nov. 29, 1973, see section 8 of Pub. L. 93–167, set out as a note under section 2101 of this title.

### § 2106. Definitions.

For purposes of this chapter:

(1) The term "original political item" means any political button, poster, literature, sticker, or any advertisement produced for use in any political cause.

(2) The term "imitation political item" means an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item.

(3) The term "original numismatic item" means anything which has been a part of a coinage or issue which has been used in exchange or has been used to commemorate a person or event. Such term includes coins, tokens, paper money, and commemorative medals.

(4) The term "imitation numismatic item" means an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item.

(5) The term "commerce" has the same meaning as such term has under the Federal Trade Commission Act.

(6) The term "Commission" means the Federal Trade Commission.

(7) The term "United States" means the States, the District of Columbia, and the Commonwealth of Puerto Rico. (Pub. L. 93–167, § 7, Nov. 29, 1973, 87 Stat. 687.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is classified to section 41 et seq. of this title.

EFFECTIVE DATE

Section applicable only to imitation political items and imitation numismatic items manufactured after Nov. 29, 1973, see section 8 of Pub. L. 93–167, set out as a note under section 2101 of this title.

## Chapter 49.—FIRE PREVENTION AND CONTROL [NEW]

Sec.

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**§ 2201. Congressional findings.**

The Congress finds that—

(1) The National Commission on Fire Prevention and Control, established pursuant to Public Law 90–259, has made an exhaustive and comprehensive examination of the Nation's fire problem, has made detailed findings as to the extent of this problem in terms of human suffering and loss of life and property, and has made ninety thoughtful recommendations.

(2) The United States today has the highest per capita rate of death and property loss from fire of all the major industrialized nations in the world.

(3) Fire is an undue burden affecting all Americans, and fire also constitutes a public health and safety problem of great dimensions. Fire kills 12,000 and scars and injures 300,000 Americans each year, including 50,000 individuals who require extended hospitalization. Almost $3 billion worth of property is destroyed annually by fire, and the total economic cost of destructive fire in the United States is estimated conservatively to be $11,000,000,000 per year. Firefighting is the Nation's most hazardous profession.

(4) Such losses of life and property from fire are unacceptable to the Congress.

(5) While fire prevention and control is and should remain a State and local responsibility, the Federal Government must help if a significant reduction in fire losses is to be achieved.

(6) The fire service and the civil defense program in each locality would both benefit from closer cooperation.

(7) The Nation's fire problem is exacerbated by (A) the indifference with which some Americans confront the subject; (B) the Nation's failure to undertake enough research and development into fire and fire-related problems; (C) the scarcity of reliable data and information; (D) the fact that designers and purchasers of buildings and products generally give insufficient attention to fire safety; (E) the fact that many communities lack adequate building and fire prevention codes; and (F) the fact that local fire departments spend about 95 cents of every dollar appropriated to the fire services on efforts to extinguish fires and only about 5 cents on fire prevention.

(8) There is a need for improved professional training and education oriented toward improving the effectiveness of the fire services, including an increased emphasis on preventing fires and on reducing injuries to firefighters.

(9) A national system for the collection, analysis, and dissemination of fire data is needed to help local fire services establish research and action priorities.

(10) The number of specialized medical centers which are properly equipped and staffed for the treatment of burns and the rehabilitation of victims of fires is inadequate.

(11) The unacceptably high rates of death, injury, and property loss from fire can be reduced if the Federal Government establishes a coordinated program to support and reinforce the fire prevention and control activities of State and local governments.

(Pub. L. 93–498, § 2, Oct. 29, 1974, 88 Stat. 1535.)

REFERENCES IN TEXT

Pub. L. 90–259 referred to in par. (1), is set out as sections 278f and 278g of this title and notes under section 278f of this title.

SHORT TITLE

Section 1 of Pub. L. 93–498 provided: "That this Act [enacting this chapter and section 290a of Title 42, The Public Health and Welfare, amending sections 278f and 1511 of this title, and repealing section 278g of this title] may be cited as the 'Federal Fire Prevention and Control Act of 1974'."

**§ 2202. Declaration of purpose.**

It is declared to be the purpose of Congress in this chapter to—

(1) reduce the Nation's losses caused by fire through better fire prevention and control;

(2) supplement existing programs of research, training, and education, and to encourage new and improved programs and activities by State and local governments;

(3) establish the National Fire Prevention and Control Administration and the Fire Research Center within the Department of Commerce; and

(4) establish an intensified program of research into the treatment of burn and smoke injuries and the rehabilitation of victims of fires within the National Institutes of Health.

(Pub. L. 93–498, § 3, Oct. 29, 1974, 88 Stat. 1536.)

**§ 2203. Definitions.**

As used in this chapter, the term—

(1) "Academy" means the National Academy for Fire Prevention and Control;

(2) "Administration" means the National Fire Prevention and Control Administration established pursuant to section 2204 of this title;

(3) "Administrator" means the Administrator of the National Fire Prevention and Control Administration;

(4) "fire service" means any organization in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private firefighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a Federal installation, a State, city, town, borough, parish, county, fire district, fire protection district, rural fire district, or other special district. The terms "fire prevention", "firefighting", and "fire-control" relate to activities conducted by a fire service;

(5) "local" means of or pertaining to any city, town, county, special purpose district, unincorporated territory, or other political subdivision of a State;

(6) "Secretary" means the Secretary of Commerce; and

(7) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, the Canal Zone, Guam, American Samoa, the Trust Territory of the Pacific Islands and any other territory or possession of the United States.

(Pub. L. 93–498, § 4, Oct. 29, 1974, 88 Stat. 1536.)

**§ 2204. National Fire Prevention and Control Administration.**

**(a) Establishment.**

There is hereby established in the Department of Commerce an agency which shall be known as the National Fire Prevention and Control Administration.

**(b) Administrator.**

There shall be at the head of the Administration the Administrator of the National Fire Prevention and Control Administration. The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule pay rates (5 U.S.C. 5315). The Administrator shall report and be responsible to the Secretary.

**(c) Deputy Administrator.**

There shall be in the Administration a Deputy Administrator of the National Fire Prevention and Control Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule pay rates (5 U.S.C. 5316). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator. (Pub. L. 93–498, § 5, Oct. 29, 1974, 88 Stat. 1536.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2203 of this title.

**§ 2205. Public education.**

The Administrator is authorized to take all steps necessary to educate the public and to overcome public indifference as to fire and fire prevention. Such steps may include, but are not limited to, publications, audiovisual presentations, and demonstrations. Such public education efforts shall include programs to provide specialized information for those groups of individuals who are particularly vulnerable to fire hazards, such as the young and the elderly. The Administrator shall sponsor and encourage research, testing, and experimentation to determine the most effective means of such public education. (Pub. L. 93–498, § 6, Oct. 29, 1974, 88 Stat. 1537.)

**§ 2206. National Academy for Fire Prevention and Control.**

**(a) Establishment.**

The Secretary shall establish, at the earliest practicable date, a National Academy for Fire Prevention and Control. The purpose of the Academy shall be to advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities.

**(b) Superintendent.**

The Academy shall be headed by a Superintendent, who shall be appointed by the Secretary. In exercising the powers and authority contained in this section the Superintendent shall be subject to the direction of the Administrator.

**(c) Powers of Superintendent.**

The Superintendent is authorized to—

(1) develop and revise curricula, standards for admission and performance, and criteria for the awarding of degrees and certifications;

(2) appoint such teaching staff and other personnel as he determines to be necessary or appropriate;

(3) conduct courses and programs of training and education, as defined in subsection (d) of this section;

(4) appoint faculty members and consultants without regard to the provisions of Title 5, governing appointments in the competitive service, and, with respect to temporary and intermittent services, to make appointments to the same extent as is authorized by section 3109 of Title 5;

(5) establish fees and other charges for attendance at, and subscription to, courses and programs offered by the Academy. Such fees may be modified or waived as determined by the Superintendent;

(6) conduct short courses, seminars, workshops, conferences, and similar education and training activities in all parts and localities of the United States;

(7) enter into such contracts and take such other actions as may be necessary in carrying out the purposes of the Academy; and

(8) consult with officials of the fire services and other interested persons in the exercise of the foregoing powers.

**(d) Program of the Academy.**

The Superintendent is authorized to—

(1) train fire service personnel in such skills and knowledge as may be useful to advance their ability to prevent and control fires, including, but not limited to—

(A) techniques of fire prevention, fire inspection, firefighting, and fire and arson investigation;

(B) tactics and command of firefighting for present and future fire chiefs and commanders;

(C) administration and management of fire services;

(D) tactical training in the specialized field of aircraft fire control and crash rescue;

(E) tactical training in the specialized field of fire control and rescue aboard waterborne vessels; and

(F) the training of present and future instructors in the aforementioned subjects;

(2) develop model curricula, training programs and other educational materials suitable for use at other educational institutions, and to make such materials available without charge;

(3) develop and administer a program of correspondence courses to advance the knowledge and skills of fire service personnel;

(4) develop and distribute to appropriate officials model questions suitable for use in conducting entrance and promotional examinations for fire service personnel; and

(5) encourage the inclusion of fire prevention and detection technology and practices in the education and professional practice of architects, builders, city planners, and others engaged in design and planning affected by fire safety problems.

**(e) Technical assistance.**

The Administrator is authorized, to the extent that he determines it necessary to meet the needs of the Nation, to encourage new programs and to strengthen existing programs of education and training by local fire services, units, and departments, State and local governments, and private institutions, by providing technical assistance and advice to—

(1) vocational training programs in techniques of fire prevention, fire inspection, firefighting, and fire and arson investigation;

(2) fire training courses and programs at junior colleges; and

(3) four-year degree programs in fire engineering at colleges and universities.

**(f) Assistance to state and local fire service training programs.**

The Administrator is authorized to provide assistance to State and local fire service training programs through grants, contracts, or otherwise. Such assistance shall not exceed 4 per centum of the amount authorized to be appropriated in each fiscal year pursuant to section 2216 of this title.

**(g) Site selection.**

The Academy shall be located on such site as the Secretary selects, subject to the following provisions:

(1) The Secretary is authorized to appoint a Site Selection Board consisting of the Academy Superintendent and two other members to survey the most suitable sites for the location of the Academy and to make recommendations to the Secretary.

(2) The Site Selection Board in making its recommendations and the Secretary in making his final selection, shall give consideration to the training and facility needs of the Academy, environmental effects, the possibility of using a surplus Government facility, and such other factors as are deemed important and relevant. The Secretary shall make a final site selection not later than 2 years after October 29, 1974.

**(h) Construction costs.**

Of the sums authorized to be appropriated for the purpose of implementing the programs of the Administration, not more than $9,000,000 shall be available for the construction of facilities of the Academy on the site selected under subsection (g) of this section. Such sums for such construction shall remain available until expended.

**(i) Educational and professional assistance.**

The Administrator is authorized to—

(1) provide stipends to students attending Academy courses and programs, in amounts up to 75 per centum of the expense of attendance, as established by the Superintendent;

(2) provide stipends to students attending courses and nondegree training programs approved by the Superintendent at universities, colleges, and junior colleges, in amounts up to 50 per centum of the cost of tuition;

(3) make or enter into contracts to make payments to institutions of higher education for loans, not to exceed $2,500 per academic year for any individual who is enrolled on a full-time basis in an undergraduate or graduate program of fire research or engineering which is certified by the Superintendent. Loans under this paragraph shall be made on such terms and subject to such conditions as the Superintendent and each institution involved may jointly determine; and

(4) establish and maintain a placement and promotion opportunities center in cooperation with the fire services, for firefighters who wish to learn and take advantage of different or better career opportunities. Such center shall not limit such assistance to students and graduates of the Academy, but shall undertake to assist all fire service personnel.

**(j) Board of Visitors.**

Upon establishment of the Academy, the Secretary shall establish a procedure for the selection of professionals in the field of fire safety, fire prevention, fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management to serve as members of a Board of Visitors for the Academy. Pursuant to such procedure, the Secretary shall select eight such persons to serve as members of such Board of Visitors to serve such terms as the Secretary may prescribe. The function of such Board shall be to review annually the program of the Academy and to make comments and recommendations to the Secretary regarding the operation of the Academy and any improvements therein which such Board deems appropriate. Each member of such Board shall be reimbursed for any expenses actually incurred by him in the performance of his duties as a member of such Board.

**(k) Accreditation.**

The Superintendent is authorized to establish a Committee on Fire Training and Education which shall inquire into and make recommendations regarding the desirability of establishing a mechanism for accreditation of fire training and education programs and courses, and the role which the Academy should play if such a mechanism is recommended. The Committee shall consist of the Superintendent as Chairman and eighteen other members appointed by the Administrator from among individuals and organizations possessing special knowledge and experience in the field of fire training and education or related fields. The Committee shall submit to the Administrator within two years after its appointment, a full and complete report of its findings and recommendations. Upon the submission of such report, the Committee shall cease to exist. Each appointed member of the Committee shall be reimbursed for expenses actually incurred in the performance of his duties as a member.

**(f) Admission.**

The Superintendent is authorized to admit to the courses and programs of the Academy individuals who are members of the firefighting, rescue, and civil defense forces of the Nation and such other individuals, including candidates for membership in these forces, as he determines can benefit from attendance. Students shall be admitted from any State, with due regard to adequate representation in the student body of all geographic regions of the Nation. In selecting students, the Superintendent may seek nominations and advice from the fire services and other organizations which wish to send students to the Academy. (Pub. L. 93–498, §7, Oct. 29, 1974, 88 Stat. 1537.)

**§ 2207. Fire technology.**

**(a) Development.**

The Administrator shall conduct a continuing program of development, testing, and evaluation of equipment for use by the Nation's fire, rescue, and civil defense services, with the aim of making available improved suppression, protective, auxiliary, and warning devices incorporating the latest technology. Attention shall be given to the standardization, compatibility, and interchangeability of such equipment. Such development, testing, and evaluation activities shall include, but need not be limited to—

(1) safer, less cumbersome articles of protective clothing, including helmets, boots, and coats;

(2) breathing apparatus with the necessary duration of service, reliability, low weight, and ease of operation for practical use;

(3) safe and reliable auxiliary equipment for use in fire prevention, detection, and control, such as fire location detectors, visual and audio communications equipment, and mobile equipment;

(4) special clothing and equipment needed for forest fires, brush fires, oil and gasoline fires, aircraft fires and crash rescue, fires occurring aboard waterborne vessels, and in other special firefighting situations;

(5) fire detectors and related equipment for residential use with high sensitivity and reliability, and which are sufficiently inexpensive to purchase, install, and maintain to insure wide acceptance and use;

(6) in-place fire prevention systems of low cost and of increased reliability and effectiveness;

(7) methods of testing fire alarms and fire protection devices and systems on a non-interference basis;

(8) the development of purchase specifications, standards, and acceptance and validation test procedures for all such equipment and devices; and

(9) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

**(b) Limitation on manufacture and sale of equipment.**

The Administration shall not engage in the manufacture or sale of any equipment or device developed pursuant to this section, except to the extent that it deems it necessary to adequately develop, test, or evaluate such equipment or device.

**(c) Management studies.**

(1) The Administrator is authorized to conduct, directly or through contracts or grants, studies of the operations and management aspects of fire services, utilizing quantitative techniques, such as operations research, management economics, cost effectiveness studies, and such other techniques and methods as may be applicable and useful. Such studies shall include, but need not be limited to, the allocation of resources, the optimum location of fire stations, the optimum geographical area for an integrated fire service, the manner of responding to alarms, the operation of citywide and regional fire dispatch centers, firefighting under conditions of civil disturbance, and the effectiveness, frequency, and methods of building inspections.

(2) The Administrator is authorized to conduct, directly or through contracts or grants, research concerning the productivity and efficiency of fire service personnel, the job categories and skills required by fire services under varying conditions, the reduction of injuries to fire service personnel, the most effective fire prevention programs and activities, and techniques for accuracy measuring and analyzing the foregoing.

(3) The Administrator is authorized to conduct, directly or through contracts, grants, or other forms of assistance, development, testing and demonstration projects to the extent deemed necessary to introduce and to encourage the acceptance of new technology, standards, operating methods, command techniques, and management systems for utilization by the fire services.

(4) The Administrator is authorized to assist the Nation's fire services, directly or through contracts, grants, or other forms of assistance, to measure and evaluate, on a cost-benefit basis, the effectiveness of the programs and activities of each fire service and the predictable consequences on the applicable local fire services of coordination or combination, in whole or in part, in a regional, metropolitan, or statewide fire service.

**(d) Rural assistance.**

The Administrator is authorized to assist the Nation's fire services, directly or through contracts, grants, or other forms of assistance, to sponsor and encourage research into approaches, techniques, systems, and equipment to improve fire prevention and control in the rural and remote areas of the Nation.

**(e) Coordination.**

In establishing and conducting programs under this section, the Administrator shall take full advantage of applicable technological developments made by other departments and agencies of the Federal Government, by State and local governments, and by business, industry, and nonprofit associations. (Pub. L. 93–498, § 8, Oct. 29, 1974, 88 Stat. 1540.)

**§ 2208. National Fire Data Center.**

**(a) Functions.**

The Administrator shall operate, directly or through contracts or grants, an integrated, comprehensive National Fire Data Center for the selection,

analysis, publication, and dissemination of information related to the prevention, occurrence, control, and results of fires of all types. The program of such Data Center shall be designed to (1) provide an accurate nationwide analysis of the fire problem, (2) identify major problem areas, (3) assist in setting priorities, (4) determine possible solutions to problems, and (5) monitor the progress of programs to reduce fire losses. To carry out these functions, the Data Center shall gather and analyze—

(1) information on the frequency, causes, spread, and extinguishment of fires;

(2) information on the number of injuries and deaths resulting from fires, including the maximum available information on the specific causes and nature of such injuries and deaths, and information on property losses;

(3) information on the occupational hazards faced by firefighters, including the causes of deaths and injuries arising, directly and indirectly, from firefighting activities;

(4) information on all types of firefighting activities, including inspection practices;

(5) technical information related to building construction, fire properties of materials, and similar information;

(6) information on fire prevention and control laws, systems, methods, techniques, and administrative structures used in foreign nations;

(7) information on the causes, behavior, and best method of control of other types of fire, including, but not limited to, forest fires, brush fires, fire underground, oil blow-out fires, and waterborne fires; and

(8) such other information and data as is deemed useful and applicable.

**(b) Methods.**

In carrying out the program of the Data Center, the Administrator is authorized to—

(1) develop standardized data reporting methods;

(2) encourage and assist State, local, and other agencies, public and private, in developing and reporting information; and

(3) make full use of existing data gathering and analysis organizations, both public and private.

**(c) Dissemination of fire data.**

The Administrator shall insure dissemination to the maximum extent possible of fire data collected and developed by the Data Center, and shall make such data, information, and analysis available in appropriate form to Federal agencies, State and local governments, private organizations, industry, business, and other interested persons. (Pub. L. 93–498, § 9, Oct. 29, 1974, 88 Stat. 1541.)

**§ 2209. Master plans.**

**(a) Encouragement by Administrator.**

The establishment of master plans for fire prevention and control are the responsibility of the States and the political subdivisions thereof. The Administrator is authorized to encourage and assist such States and political subdivisions in such planning activities, consistent with his powers and duties under this chapter.

**(b) Report to Congress.**

Four years after October 29, 1974, the Secretary shall submit to the Congress a report on the establishment and effectiveness of master plans in the field of fire prevention and control throughout the Nation. Such report shall include, but need not be limited to—

(1) a summary of the extent and quality of master planning activities;

(2) a summary and evaluation of master plans that have been prepared by States and political subdivisions thereof. Such summary and evaluation shall consider, with respect to each such plan (A) the characteristics of the jurisdiction adopting it, including, but not limited to, density and distribution of population; ratio of volunteer versus paid fire services; geographic location, topography, and climate; per capita rate of death and property loss from fire; size and characteristics of political subdivisions of the governmental units thereof; and socio-economic composition; and (B) the approach to development and implementation of the master plans;

(3) an evaluation of the best approach to the development and implementation of master plans (e.g., central planning by a State agency, regionalized planning within a State coordinated by a State agency, or local planning supplemented and coordinated by a State agency);

(4) an assessment of the costs and benefits of master plans;

(5) a recommendation to Congress on whether Federal financial assistance should be authorized in order that master plans can be developed in all States; and

(6) a model master plan or plans suitable for State and local implementation.

**(c) Definition.**

For the purposes of this section, a "master plan" is one which will result in the planning and implementation in the area involved of a general program of action for fire prevention and control. Such master plan is reasonably expected to include (1) a survey of the resources and personnel of existing fire services and an analysis of the effectiveness of the fire and building codes in such area; (2) an analysis of short and long term fire prevention and control needs in such area; (3) a plan to meet the fire prevention and control needs in such area; and (4) an estimate of cost and realistic plans for financing the implementation of the plan and operation on a continuing basis and a summary of problems that are anticipated in implementing such master plan. (Pub. L. 93–498, § 10, Oct. 29, 1974, 88 Stat. 1542.)

**§ 2210. Reimbursement for costs of firefighting on federal property.**

**(a) Filing of claims.**

Each fire service that engages in the fighting of a fire on property which is under the jurisdiction of the United States may file a claim with the Administrator for the amount of direct expenses and direct losses incurred by such fire service as a result of

fighting such fire. The claim shall include such supporting information as the Administrator may prescribe.

**(b) Determination.**

Upon receipt of a claim filed under subsection (a) of this section, the Administrator shall determine—

(1) what payments, if any, to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question;

(2) the extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim; and

(3) the amount, if any, of the additional costs referred to in paragraph (2) of this subsection which were not adequately covered by the payments referred to in paragraph (1) of this subsection.

**(c) Payment.**

The Secretary shall forward the claim and a copy of the Administrator's determination under subsection (b)(3) of this section to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination, pay such fire service or its parent jurisdiction, from any moneys in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred, a sum no greater than the amount determined with respect to the claim under subsection (b)(3) of this section.

**(d) Adjudication.**

In the case of a dispute arising in connection with a claim under this section, the Court of Claims of the United States shall have jurisdiction to adjudicate the claim and enter judgment accordingly. (Pub. L. 93–498, § 11, Oct. 29, 1974, 88 Stat. 1543.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is refered to in section 2216 of this title.

**§ 2211. Review of fire prevention codes.**

The Administrator is authorized to review, evaluate, and suggest improvements in State and local fire prevention codes, building codes, and any relevant Federal or private codes and regulations. In evaluating any such code or codes, the Administrator shall consider the human impact of all code requirements, standards, or provisions in terms of comfort and habitability for residents or employees, as well as the fire prevention and control value or potential of each such requirement, standard, or provision. (Pub. L. 93–498, § 12, Oct. 29, 1974, 88 Stat. 1543.)

**§ 2212. Fire safety effectiveness statements.**

The Administrator is authorized to encourage owners and managers of residential multiple-unit, commercial, industrial, and transportation structures to prepare Fire Safety Effectiveness Statements, pursuant to standards, forms, rules, and regulations to be developed and issued by the Administrator. (Pub. L. 93–498, § 13, Oct. 29, 1974, 88 Stat. 1544.)

**§ 2213. Annual conference.**

The Administrator is authorized to organize, or to participate in organizing, an annual conference on fire prevention and control. He may pay, in whole or in part, the cost of such conference and the expenses of some or all of the participants. All of the Nation's fire services shall be eligible to send representatives to each such conference to discuss, exchange ideas on, and participate in educational programs on new techniques in fire prevention and control. Such conferences shall be open to the public. (Pub. L. 93–498, § 14, Oct. 29, 1974, 88 Stat. 1544.)

**§ 2214. Public safety awards.**

**(a) Establishment.**

There are hereby established two classes of honorary awards for the recognition of outstanding and distinguished service by public safety officers—

(1) the President's Award For Outstanding Public Safety Service ("President's Award"); and

(2) the Secretary's Award For Distinguished Public Safety Service ("Secretary's Award").

**(b) Description.**

(1) The President's Award shall be presented by the President of the United States to public safety officers for extraordinary valor in the line of duty or for outstanding contribution to public safety.

(2) The Secretary's Award shall be presented by the Secretary, the Secretary of Defense, or by the Attorney General to public safety officers for distinguished service in the field of public safety.

**(c) Selection.**

The Secretary, the Secretary of Defense, and the Attorney General shall advise and assist the President in the selection of individuals to whom the President's Award shall be tendered and in the course of performing such duties they shall seek and review nominations for such awards which are submitted to them by Federal, State, county, and local government officials. They shall annually transmit to the President the names of those individuals determined by them to merit the award, together with the reasons therefor. Recipients of the President's Award shall be selected by the President.

**(d) Limitation on number of awards.**

(1) There shall not be presented in any one calendar year in excess of twelve President's Awards.

(2) There shall be no limitation on the number of Secretary's Awards presented.

**(e) Award.**

(1) Each President's Award shall consist of—

(A) a medal suitably inscribed, bearing such devices and emblems, and struck from such material as the Secretary of the Treasury, after consultation with the Secretary, the Secretary of Defense, and the Attorney General deems appropriate. The Secretary of the Treasury shall cause the medal to be struck and furnished to the President; and

(B) an appropriate citation.

(2) Each Secretary's Award shall consist of an appropriate citation.

**(f) Regulations.**

The Secretary, the Secretary of Defense, and the Attorney General are authorized and directed to issue jointly such regulations as may be necessary to carry out this section.

**(g) Definitions.**

As used in this section, the term "public safety officer" means a person serving a public agency, with or without compensation, as—

(1) a firefighter;

(2) a law enforcement officer, including a corrections or court officer; or

(3) a civil defense officer.

(Pub. L. 93–498, § 15, Oct. 29, 1974, 88 Stat. 1544.)

**§ 2215. Reports to Congress and President.**

The Secretary shall report to the Congress and the President not later than June 30 of the year following October 29, 1974, and each year thereafter on all activities relating to fire prevention and control, and all measures taken to implement and carry out this chapter during the preceding calendar year. Such report shall include, but need not be limited to—

(a) a thorough appraisal, including statistical analysis, estimates, and long-term projections of the human and economic losses due to fire;

(b) a survey and summary, in such detail as is deemed advisable, of the research and technology program undertaken or sponsored pursuant to this chapter;

(c) a summary of the activities of the Academy for the preceding 12 months, including, but not limited to—

(1) an explanation of the curriculum of study;

(2) a description of the standards of admission and performance;

(3) the criteria for the awarding of degrees and certificates; and

(4) a statistical compilation of the number of students attending the Academy and receiving degrees or certificates;

(d) a summary of the activities undertaken to assist the Nation's fire services;

(e) a summary of the public education programs undertaken;

(f) an analysis of the extent of participation in preparing and submitting Fire Safety Effectiveness Statements;

(g) a summary of outstanding problems confronting the administration of this chapter, in order of priority;

(h) such recommendations for additional legislation as are deemed necessary or appropriate; and

(i) a summary of reviews, evaluations, and suggested improvements in State and local fire prevention and building codes, fire services, and any relevant Federal or private codes, regulations, and fire services.

(Pub. L. 93–498, § 16, Oct. 29, 1974, 88 Stat. 1545.)

**§ 2216. Authorization of appropriations.**

There are authorized to be appropriated to carry out the foregoing provisions of this chapter, except section 2210 of this title, such sums as are necessary, not to exceed $10,000,000 for the fiscal year ending June 30, 1975, and not to exceed $15,000,000 for the fiscal year ending June 30, 1976. (Pub. L. 93–498, § 17, Oct. 29, 1974, 88 Stat. 1545.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2206 of this title.

**§ 2217. Public access to information.**

Copies of any document, report, statement, or information received or sent by the Secretary or the Administrator shall be made available to the public pursuant to the provisions of section 552 of Title 5: *Provided,* That, notwithstanding the provisions of subsection (b) of such section and of section 1905 of Title 18, the Secretary may disclose information which concerns or relates to a trade secret—

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public when he determines such disclosure to be necessary in order to protect health and safety after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

(Pub. L. 93–498, § 20, Oct. 29, 1974, 88 Stat. 1547.)

**§ 2218. Administrative provisions.**

**(a) Assistance to Administrator.**

Each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized and directed to furnish to the Administrator, upon written request, on a reimbursable basis or otherwise, such assistance as the Administrator deems necessary to carry out his functions and duties pursuant to this chapter, including, but not limited to, transfer of personnel with their consent and without prejudice to their position and ratings.

**(b) Powers of Administrator.**

With respect to this chapter, the Administrator is authorized to—

(1) enter into, without regard to section 5 of Title 41, such contracts, grants, leases, cooperative agreements, or other transactions as may be necessary to carry out the provisions of this chapter;

(2) accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of Title 31;

(3) purchase, lease, or otherwise acquire, own, hold, improve, use, or deal in and with any property (real, personal, or mixed, tangible or intangible), or interest in property, wherever situated; and sell, convey, mortgage, pledge, lease,

exchange, or otherwise dispose of property and assets;

(4) procure temporary and intermittent services to the same extent as is authorized under section 3109 of Title 5, but at rates not to exceed $100 a day for qualified experts; and

(5) establish such rules, regulations, and procedures as are necessary to carry out the provisions of this chapter.

**(c) Audit.**

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipients of contracts, grants, or other forms of assistance that are pertinent to its activities under this chapter for the purpose of audit or to determine if a proposed activity is in the public interest.

**(d) Inventions and discoveries.**

All property rights with respect to inventions and discoveries, which are made in the course of or under contract with any government agency pursuant to this chapter, shall be subject to the basic policies set forth in the President's Statement of Government Patent Policy issued August 23, 1971, or such revisions of that statement of the policy as may subsequently be promulgated and published in the Federal Register.

**(e) Coordination.**

To the extent practicable, the Administrator shall utilize existing programs, data, information, and facilities already available in other Federal Government departments and agencies and, where appropriate, existing research organizations, centers, and universities. The Administrator shall provide liaison at an appropriate organizational level to assure coordination of his activities with State and local government agencies, departments, bureaus, or offices concerned with any matter related to programs of fire prevention and control and with private and other Federal organizations and offices so concerned. (Pub. L. 93–498, § 21, Oct. 29, 1974, 88 Stat. 1548.)

### § 2219. Assistance to Consumer Product Safety Commission.

Upon request, the Administrator shall assist the Consumer Product Safety Commission in the development of fire safety standards or codes for consumer products, as defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.). (Pub. L. 93–498, § 22, Oct. 29, 1974, 88 Stat. 1549.)

## Chapter 50.—CONSUMER PRODUCT WARRANTIES [NEW]

Sec.
2301. Definitions.
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(b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract.
2302. Rules governing contents of warranties.—Con.
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(e) Applicability to consumer products costing more than $5.00.
2303. Designation of written warranties.
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2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty.
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2309. Procedures applicable to promulgation of rules by Commission; rulemaking proceeding for warranty and warranty practices involved in sale of used motor vehicles.
2310. Remedies in consumer disputes.
(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures.
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(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims.
(e) Class actions; conditions; procedures applicable.
(f) Warrantors subject to enforcement of remedies.
2311. Applicability of provisions to other Federal or State laws and requirements.
2312. Effective dates.

### § 2301. Definitions.

For the purposes of this chapter:

(1) The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including

any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term "warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term "written warranty" means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term "implied warranty" means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.

(8) The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.

(9) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term "remedy" means whichever of the following actions the warrantor elects:

(A) repair,

(B) replacement, or

(C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term "refund" means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

(Pub. L. 93–637, title I, § 101, Jan. 4, 1975, 88 Stat. 2183.)

EFFECTIVE DATE

Section effective 6 months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

SHORT TITLE

Section 1 of Pub. L. 93–637 provided: "That this act [which enacted this chapter and sections 57a to 57c of this title, amended sections 45, 46, 49, 50, 52, 56 and 58 of this title, and enacted provisions set out as notes under sections 45, 56, 57a and 57b of this title] may be cited as the "Magnuson-Moss Warranty—Federal Trade Commission Improvement Act'."

**§ 2302. Rules governing contents of warranties.**

**(a) Full and conspicuous disclosure of terms and conditions; additional requirements for contents.**

In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

(1) The clear identification of the names and addresses of the warrantors.

(2) The identity of the party or parties to whom the warranty is extended.

(3) The products or parts covered.

(4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.

(5) A statement of what the consumer must do and expenses he must bear.

(6) Exceptions and exclusions from the terms of the warranty.

(7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.

(8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.

(9) A brief, general description of the legal remedies available to the consumer.

(10) The time at which the warrantor will perform any obligations under the warranty.

(11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.

(12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.

(13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

**(b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract.**

(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this chapter (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

**(c) Prohibition on conditions for written or implied warranty; waiver by Commission.**

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

**(d) Incorporation by reference of detailed substantive warranty provisions.**

The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

**(e) Applicability to consumer products costing more than $5.00.**

The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $5. (Pub. L. 93–637, title I, § 102, Jan. 4, 1975, 88 Stat. 2185.)

EFFECTIVE DATE

Subsec. (a) of this section effective six months after the final publication of rules respecting such subsection, except that the Commission, for good cause shown, may postpone applicability until one year after final publication, see section 2312(b) of this title.

Subsecs. (b) to (e) of this section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2303, 2304, 2311, 2312 of this title.

**§ 2303. Designation of written warranties.**

**(a) Full (statement of duration) or limited warranty.**

Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "full (statement of duration) warranty".

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "limited warranty".

**(b) Applicability of requirements, standards, etc., to representations or statements of customer satisfaction.**

This section and sections 2302 and 2304 of this title shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

**(c) Exemptions by Commission.**

In addition to exercising the authority pertaining to disclosure granted in section 2302 of this title, the Commission may by rule determine when a written warranty does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

**(d) Applicability to consumer products costing more than $10.00 and not designated as full warranties.**

The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $10 and which are not designated "full (statement of duration) warranties". (Pub. L. 93–637, title I, § 103, Jan. 4, 1975, 88 Stat. 2187.)

EFFECTIVE DATE

Section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2311 of this title.

**§ 2304. Federal minimum standards for warranties.**

**(a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement.**

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty—

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 2308(b) of this title, such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

**(b) Duties and conditions imposed on consumer by warrantor.**

(1) In fulfilling the duties under subsection (a) of this section respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a) of this section, that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in subsection (a) of this section and the applicability of such duties to warrantors of different categories of consumer products with "full (statement of duration)" warranties.

(4) The duties under subsection (a) of this section extend from the warrantor to each person who is a consumer with respect to the consumer product.

**(c) Waiver of standards.**

The performance of the duties under subsection (a) of this section shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

**(d) Remedy without charge.**

For purposes of this section and of section 2302(c) of this title, the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) of this section to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

**(e) Incorporation of standards to products designated with full warranty for purposes of judicial actions.**

If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for purposes of any action under section 2310(d) of this title or under any State law, be

deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section. (Pub. L. 93–637, title I, § 104, Jan. 4. 1975, 88 Stat. 2187.)

EFFECTIVE DATE

Section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2301, 2303, 2308, 2311 of title.

**§ 2305. Full and limited warranting of a consumer product.**

Nothing in this chapter shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated. (Pub. L. 93–637, title I, § 105, Jan. 4, 1975, 88 Stat. 2188.)

EFFECTIVE DATE

Section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

**§ 2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty.**

(a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this chapter shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language. (Pub. L. 93–637, title I, § 106, Jan. 4, 1975, 88 Stat. 2188.)

EFFECTIVE DATE

Section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

**§ 2307. Designation of representatives by warrantor to perform duties under written or implied warranty.**

Nothing in this chapter shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a cowarrantor. (Pub. L. 93–637, title I, § 107, Jan. 4, 1975, 88 Stat. 2189.)

EFFECTIVE DATE

Section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

**§ 2308. Implied warranties.**

**(a) Restrictions on disclaimers or modifications.**

No supplier may disclaim or modify (except as provided in subsection (b) of this section) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

**(b) Limitation on duration.**

For purposes of this chapter (other than section 2304(a)(2) of this title), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

**(c) Effectiveness of disclaimers, modifications, or limitations.**

A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law. (Pub. L. 93–637, title I, § 108, Jan. 4, 1975, 88 Stat. 2189.)

EFFECTIVE DATE

Section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2301, 2304, 2311 of this title.

**§ 2309. Procedures applicable to promulgation of rules by Commission; rulemaking proceeding for warranty and warranty practices involved in sale of used motor vehicles.**

(a) Any rule prescribed under this chapter shall be prescribed in accordance with section 553 of Title 5; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 57a(e) of this title in the same manner as rules prescribed under section 57(a)(1)(B) of this title, except that section 57a(e)(3)(B) of this title shall not apply.

(b) The Commission shall initiate within one year after the January 4, 1975, a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this chapter, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this chapter, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure. (Pub. L. 93–637, title I, § 109, Jan. 4, 1975, 88 Stat. 2189.)

EFFECTIVE DATE

Section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2311 of this title.

**§ 2310. Remedies in consumer disputes.**

**(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures.**

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of his chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) of this section except to the extent the court determines necesary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d) of this section, the court may invalidate any such procedure if it finds that such procedure is unfair.

**(b) Prohibited acts.**

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by this chapter (or a rule thereunder) or to violate any prohibition contained in this chapter (or a rule thereunder).

**(c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions.**

(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive waranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 45 of this title is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

**(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims.**

(1) Subject to subsections (a)(3) and (e) of this section, a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or

under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—

(A) if the amount in controversy of any individual claim is less than the sum or value of $25;

(B) if the amount in controversy is less than the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

**(e) Class actions; conditions; procedures applicable.** No action (other than a class action or an action respecting a warranty to which subsection (a)(3) of this section applies) may be brought under subsection (d) of this section for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a waranty to which subsection (a)(3) of this section applies) brought under subsection (d) of this section for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

**(f) Warrantors subject to enforcement of remedies.** For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person. (Pub. L. 93–637, title I, § 110, Jan. 4, 1975, 88 Stat. 2189.)

EFFECTIVE DATE

Section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2304 of this title.

**§ 2311. Applicability of provisions to other Federal or State laws and requirements.**

(a)(1) Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act or any statute defined therein as an Antitrust Act.

(2) Nothing in this chapter shall be construed to repeal, invalidate, or supersede the Federal Seed Act and nothing in this chapter shall apply to seed for planting.

(b)(1) Nothing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this chapter (other than sections 2308 and 2304 (a)(2) and (4) of this title) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

(c)(1) Except as provided in subsection (b) of this section and in paragraph (2) of this subsection, a State requirement—

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 2302, 2303, and 2304 of this title (and rules implementing such sections), and

(C) which is not identical to a requirement of section 2302, 2303, or 2304 of this title (or a rule thereunder),

shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies (A) affords protection to consumers greater than the requirements of this chapter and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

(d) This chapter (other than section 2302(c) of this title) shall be inapplicable to any written warranty the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this chapter. (Pub. L. 93–637, title I, § 111, Jan. 4, 1975, 88 Stat. 2192.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a)(1), is classified to section 41 et seq. of this title.

The Antitrust Acts, referred to in subsec. (a)(1) are classified generally to this title.

The Federal Seed Act, referred to in subsec. (a)(2), is classified to section 1551 et seq. of Title 7, Agriculture.

EFFECTIVE DATE

Section effective six months after Jan. 4, 1975, but inapplicable to consumer products manufactured prior to such date, see section 2312 of this title.

**§ 2312. Effective dates; time for promulgation of rules by Commission.**

(a) Except as provided in subsection (b) of this section, this chapter shall take effect 6 months after January 4, 1975, but shall not apply to consumer products manufactured prior to such date.

(b) Section 2302(a) of this title shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this chapter.

(c) The Commission shall promulgate rules for initial implementation of this chapter as soon as possible after January 4, 1975, but in no event later than one year after such date. (Pub. L. 93–637, title I, § 112, Jan. 4, 1975, 88 Stat. 2192.)

## Chapter 51.—NATIONAL PRODUCTIVITY AND QUALITY OF WORKING LIFE [NEW]

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### SUBCHAPTER I.—FINDINGS, PURPOSE, AND POLICY; DEFINITIONS

**§ 2401. Congressional findings.**

The Congress finds that—

(1) the rate of productivity growth in the United States has declined during four of the past six years;

(2) the decline in the rate of productivity growth has contributed to inflation, to economic stagnation, and to increasing unemployment;

(3) since 1965, the rate of productivity growth of the United States has been consistently lower than that of many industrial nations in the world, adversely affecting the competitive position of the United States in world markets;

(4) growth in productivity of the economy of the United States is essential to the social and economic welfare of the American people, and to the health of the world economy;

(5) growth in the productivity of the Nation's economy is essential to maintain and increase employment, to stabilize the cost of living and to provide job security;

(6) mounting worldwide material shortages and their consequent inflationary results make increased efficiency in the utilization of these resources of urgent importance;

(7) sharing the fruits of productivity gains among labor, management, and owners may considerably influence productivity;

(8) the continued development of joint labor-management efforts to provide a healthy environment for collective bargaining can make a significant contribution to improve productivity and foster industrial peace;

(9) factors affecting the growth of productivity in the economy include not only the status of technology and the techniques of management but also the role of the worker in the production process and the conditions of his working life;

(10) there is a national need to identify and encourage appropriate application of capital in sectors of American economic activity in order to improve productivity;

(11) there is a national need to identify and encourage appropriate application of technology in all sectors of American economic activity in order to improve productivity;

(12) there is a national need to identify and encourage the development of social, economic, scientific, business, labor, and governmental contributions to improve productivity growth, and increased economic effectiveness in the public and private sectors of the United States; which objectives can best be accomplished through maximizing private sector and State and local development of such contributions;

(13) there is a national need to identify, study, and revise or eliminate the laws, regulations, policies, and procedures which adversely affect productivity growth and the efficient functioning of the economy;

(14) there is a national need to increase employment security through such activities as manpower planning, skill-training and retraining of workers, internal work force adjustments to avoid

worker displacement, assistance to workers facing or experiencing displacement, and all other public and private programs which seek to minimize the human costs of productivity improvement, thereby diminishing resistance to workplace change and improving productivity growth;

(15) there is a national need to develop new technologies for the more effective production of goods and services;

(16) there is a national need to encourage and support efforts by qualified institutions of higher learning to identify and inaugurate programs which will improve productivity;

(17) there is a national need to develop precise, standardized measurements of productivity; and

(18) there is a national need to gather and disseminate information about methods and techniques to improve productivity.

(Pub. L. 94–136, title I, § 101, Nov. 28, 1975, 89 Stat. 733.)

SHORT TITLE

Section 1 of Pub. L. 94–136 provided: "That this Act [enacting this chapter, repealing section 1026 of this title, and enacting provisions set out as notes under this section] may be cited as the 'National Productivity And Quality of Working Life Act of 1975'."

TRANSFER OF FUNCTIONS AND STAFF OF NATIONAL COMMISSION ON PRODUCTIVITY AND WORK QUALITY

Section 602 of Pub. L. 94–136 provided that:

"(a) The functions and staff of the National Commission on Productivity and Work Quality are hereby transferred to the Center.

"(b) All property, records, and contracts as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with any function transferred by subsection (a) are transferred to the Center."

### § 2402. Congressional statement of purpose.

It is the purpose of this chapter—

(1) to establish a national policy which will encourage productivity growth consistent with needs of the economy, the natural environment, and the needs, rights, and best interests of management, the work force, and consumers; and

(2) to establish as an independent establishment of the executive branch a National Center for Productivity and Quality of Working Life to focus, coordinate, and promote efforts to improve the rate of productivity growth.

(Pub. L. 94–136, title I, § 102, Nov. 28, 1975, 89 Stat. 734.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2461 of this title.

### § 2403. Congressional declaration of policy.

(a) The Congress, recognizing the profound impact of productivity on the interrelations of all components of the national economy, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, to use all practicable means and measures, including financial and technical assistance, to stimulate a high rate of productivity growth.

(b) It is the continuing responsibility of the Federal Government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources to carry out the policy set forth in this chapter.

(c) The laws, rules, regulations, and policies of the United States shall be so interpreted as to give full force and effect to this policy. (Pub. L. 94–136, title I, § 103, Nov. 28, 1975, 89 Stat. 734.)

### § 2404. Definitions.

For the purposes of this chapter—

(1) the term "Center" means the National Center for Productivity and Quality of Working Life;

(2) the term "Board" means the Board of Directors of the Center;

(3) the terms "productivity growth" and "improved productivity" shall be interpreted to include, but not be limited to, improvements in technology, management techniques, and the quality of working life; and

(4) the term "quality of working life" shall be interpreted to mean the conditions of work relating to the role of the worker in the production process.

(Pub. L. 94–136, title I, § 104, Nov. 28, 1975, 89 Stat. 735.)

## SUBCHAPTER II.—NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

### § 2411. Establishment.

There is hereby established as an independent establishment of the executive branch of the Government the National Center for Productivity and Quality of Working Life. (Pub. L. 94–136, title II, § 201, Nov. 28, 1975, 89 Stat. 735.)

### § 2412. Board of Directors.

(a) Membership.

The Center shall have a Board of Directors, to be comprised of not more than twenty-seven members, as follows:

(1) a Chairman, appointed by the President, by and with the advice and consent of the Senate;

(2) the Secretary of the Treasury;

(3) the Secretary of Commerce;

(4) the Secretary of Labor;

(5) the Director of the Federal Mediation and Conciliation Service;

(6) the Executive Director of the Center;

(7) not less than five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified private individuals in manufacturing and service industries;

(8) not less than five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified private individuals from labor organizations;

(9) not less than two members who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified individuals in State or local governments;

(10) not less than one member who shall be appointed by the President, by and with the advice and consent of the Senate, from among the general public;

(11) not less than one member who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified

individuals associated with leading institutions of higher education; and

(12) such other qualified members from the public or private sectors whom the President may deem appropriate who shall be appointed by the President, by and with the advice and consent of the Senate.

When unable to attend a meeting of the Board, a member appointed under clauses (2), (3), (4), and (5) shall appoint an appropriate alternate from such member's Department or agency to represent such member at that meeting.

**(b) Term.**

(1) The members of the Board appointed under clauses (7), (8), (9), (10), (11), and any private sector members appointed pursuant to clause (12) of subsection (a) of this section shall be appointed for a four-year term coterminous with the term of the President. Members other than members appointed under such clauses, with the exception of the Chairman, shall serve as long as such member is head of the department or agency represented on the Board. No person shall serve as an acting or temporary member in positions requiring Senate confirmation including that of Chairman, for a period in excess of three months.

(2) The President shall appoint a Chairman for a term of four years coterminous with the term of the President. In appointing a Chairman, the President may appoint an individual who is an officer of the United States. If that officer has been appointed to his current position, by and with the advice and consent of the Senate, or if such individual is the Vice President of the United States, such individual may be appointed chairman by the President without the requirement of confirmation by the Senate.

**(c) Vacancies.**

Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term.

**(d) Compensation, travel, subsistence, and other expense items.**

(1) Each member of the Board appointed under clauses (7), (8), (9), (10), (11), and any private sector members appointed pursuant to clause (12) of subsection (a) of this section may be compensated at the daily rate provided for GS–18 of the General Schedule under section 5332 of Title 5, including traveltime, for each day such member is engaged in the performance of his duties as a member of the Board and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in carrying out the functions of the Board.

(2) Other members of the Board, with the exception of the Chairman, and the Executive Director of the Center shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Board.

(3) The Chairman shall be compensated as set forth in paragraph (1) of this subsection, except if the Chairman holds some other position in the Federal Government such individual shall be compensated as set forth in paragraph (2) of this subsection.

**(e) Executive Committee of the Board.**

(1) The Chairman shall appoint an Executive Committee of the Board, not to exceed seven members, including the Executive Director of the Center.

(2) The Executive Committee of the Board shall meet at the call of the Chairman, but in no case less frequently than once every ninety days. (Pub. L. 94–136, title II, § 202, Nov. 28, 1975, 89 Stat. 735.)

**§ 2413. Executive Director; Deputy Director.**

(a) The Center shall have an Executive Director, who shall be appointed by the President by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of fitness to perform the duties and functions of the office. No person shall serve as acting or temporary Executive Director for a period in excess of three months.

(b) The Executive Director shall appoint a Deputy Director, who shall perform such functions as the Executive Director may prescribe. The Deputy Director shall act for and exercise the powers of the Executive Director during the absence or disability of the Executive Director.

(c) The Executive Director shall be responsible for the exercise of all powers and the discharge of all duties of the Center. The Executive Director shall have authority over and control of all of the staff of the Center and their activities. The Executive Director shall maintain budgets and allocate available funds as appropriate in carrying out the provisions of this chapter.

(d) The Executive Director shall be compensated at a rate not to exceed that provided for Executive level IV under section 5315 of Title 5 as determined by the President, and shall have no other employment, public or private, during the tenure of his appointment. (Pub. L. 94–136, title II, § 203, Nov. 28, 1975, 89 Stat. 736.)

**§ 2414. Functions of the Center.**

The Center shall—

(1) develop and establish, in consultation with the appropriate committees of the Congress and with the appropriate departments and agencies of the executive branch, a national policy for productivity growth in the public and private sectors of the United States consistent with the purposes of this chapter;

(2) seek, stimulate, and encourage maximum active participation of—

(A) the private sector of the Nation's economy, including labor organizations, associations and confederations, business enterprises and associations, institutions of higher education, foundations and other philanthropic organizations and research centers and institutes; and

(B) the public sector of the Nation's economy, including Federal, State, and local governments and agencies thereof, including institutions of higher education,

in efforts to improve the rate of productivity growth in all sectors of the Nation's economy;

(3) seek, stimulate, and encourage maximum active participation of the public agencies and private organizations identified in clause (2) of

this section through identification and encouragement of selected research and demonstration programs implemented by public agencies and qualified private organizations which will—

(A) increase the rate of productivity growth in the public and private sectors of the national economy through improved and innovative utilization of technological and human resources; and

(B) develop, refine, and apply accurate and reliable measurement techniques to evaluate changes in productivity;

(4) to identify, study, and review—

(A) existing Federal, State, and local statutes, regulations, and fiscal policies which adversely affect productivity growth or the economic performance of the public and private sectors of the United States;

(B) incentives to encourage industry and labor initiatives in the development of methods, techniques, and systems for the improved utilization of technological and human resources in the public and private sectors;

(C) existing and new programs, plans, and other methods, including advanced warning systems, retraining programs, retirement and separation programs, designed to counteract threats to job security which may result from efforts to improve productivity;

(D) jointly, with the Civil Service Commission, the impact of Federal personnel policies, statutes, and regulations affecting the productivity of Federal agencies and the quality of working life of Federal employees; and

(E) the need and feasibility of providing, directly to potential users, public or private, various Center services in return for payment to the Center, and methods by which charges for such services will be established;

(5) recommend to the President, the Congress, the appropriate agencies and departments of the Federal Government, and State and local governments, any legislation, revisions of regulations, policies, practices, and procedures which result from the activities carried out under clause (4) of this section;

(6) encourage, support, and initiate efforts in the public or private sector specifically designed to improve cooperation between labor and management in the achievement of continued productivity growth: *Provided, however,* That no activities of the Center involving consideration of issues included in a specific labor-management agreement shall be undertaken without the consent and cooperation of the parties to that agreement;

(7) encourage departments and agencies of the Federal Government to initiate, stimulate, and support efforts in both the public and private sectors of the United States to improve the rate of productivity growth;

(8) coordinate all activities referred to in subsection (7) of this section in order to eliminate interagency duplication of effort and cost, to insure that Center activities will not unnecessarily conflict or overlap with such other activities, and to maximize the effectiveness of all such Federal programs and activities;

(9) coordinate and consult with the departments and agencies of the Federal Government in the obligation and expenditure of funds for activities and projects in both the public and private sectors to improve productivity growth;

(10) identify, develop, and support activities, programs, systems, and techniques, in the various departments and agencies of the Federal Government for measuring productivity growth within such departments and agencies;

(11) collect and disseminate relevant information obtained by the Center or other public agencies, institutions of higher education, or private organizations engaged in projects under this chapter, including information related to new or improved methods, systems, technological develpments, equipment, and devices to improve and stimulate productivity growth, and to develop and implement a public information program designed to inform the public of the meaning and importance of productivity, and productivity growth;

(12) encourage and coordinate the efforts of State and local governments, and institutions of higher education, to improve productivity;

(13) maintain liaison with organizations, both domestic and foreign, involved in efforts to improve productivity;

(14) determine the Nation's needs for productivity-related management and analytical skills and to encourage and facilitate the development of training programs in such skills; and

(15) study the effects of materials availability upon productivity growth.

(Pub. L. 94–136, title II, § 204, Nov. 28, 1975, 89 Stat. 737.)

**§ 2415. Powers of the Center.**

In carrying out its functions, the Center is authorized—

(1) to enter into contracts or other funding arrangements, or modifications thereof, in order to carry out the provisions of this chapter;

(2) to organize and conduct, directly by contract or other funding arrangements with other public agencies or private organizations, conferences, meetings, seminars, workshops, or other forums for the presentation and dissemination of relevant information generated or collected pursuant to the provisions of this chapter;

(3) to make such studies and recommendations to the President and to Congress as may be necessary to carry out the functions of the Center;

(4) to implement a program and secure necessary facilities for the collection, collation, analysis, and interpretation of data and information as required in order to carry out the public information functions under this chapter; and

(5) to undertake such other studies, reviews, activities, and to make such recommendations and reports as may be required to carry out the functions of the Center.

(Pub. L. 94–136, title II, § 205, Nov. 28, 1975, 89 Stat. 739.)

**§ 2416. Contracts and other funding arrangements.**

(a) No contracts or other funding arrangements may be entered into under this chapter unless—

(1) such contracts or other funding arrangements will be consistent with the policies and purposes of this chapter and of potential benefit to other users in the public or private sectors;

(2) provisions are made to evaluate the demonstration program and maintain improvement data, such evaluation either to be implemented by the participating parties in accordance with specifications established by the Center, or to be implemented by or on behalf of the Center; and

(3) the participating parties agree that all information relating to any innovation or achievement generated in the course of any Center-funded demonstration program shall be public information.

(b) No contract or other funding arrangement shall be made or entered into pursuant to the provisions of this chapter for a period of more than three years.

(c) Any non-Federal share of a project may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, or services. (Pub. L. 94–136, title II, § 206, Nov. 28, 1975, 89 Stat. 739.)

**§ 2417. Same; criteria.**

(a) The Center shall prescribe by regulation, after consultation with appropriate agencies and officials of Federal, State, and local governments, basic criteria for the participating parties under this chapter.

(b) If the Center determines, on the basis of information available to it during any fiscal year, that a portion of the funds provided to a participating party for that fiscal year will not be required by the party or will become available by virtue of the application of regulations established by the Center to govern noncompliance by a participating party, that portion shall be available for reallocation under this section.

(c) The Center shall by regulation prescribe the basic criteria for determination of noncompliance by participating parties including appropriate provisions for notice and hearing with respect to such determination. (Pub. L. 94–136, title II, § 207, Nov. 28, 1975, 89 Stat. 739.)

**§ 2418. Annual report.**

(a) Not later than December 31 of each year, the Center shall report to the President and to the Congress on activities pursuant to the provision of this subchapter during the preceding fiscal year; such reports shall include a detailed statement of all public and private funds received and expended together with such recommendations as the Center deems appropriate. Such report shall include an analysis of the extent to which each agency of the Federal Government which has significant responsibilities for assisting in the improvement of productivity is carrying out such responsibilities consistent with the provisions of this chapter, including (A) an accounting of all funds expended or obligated by such agencies for activities and projects to improve productivity growth, (B) an assessment of the extent to which such expenditures or obligations have furthered the policies of the Center, and (C) the Center's recommendations on how these expenditures and obligations can be better coordinated to accomplish the purposes of this chapter.

(b) Each report required to be submitted to the Congress by this chapter shall be referred to the standing committee or committees having jurisdiction over any part of the subject matter of the report. (Pub. L. 94–136, title II, § 208, Nov. 28, 1975, 89 Stat. 740.)

## SUBCHAPTER III.—FEDERAL AGENCY COORDINATION AND LIAISON WITH CENTER

**§ 2431. Liaison with center.**

**(a) Designee.**

Each department, agency, and independent establishment of the Federal Government shall designate a qualified individual to serve as liaison with the Center and to assist the Center in carrying out its functions pursuant to this chapter.

**(b) Consultation with departments, agencies, and independent establishments of Federal Government.**

Each department, agency, and independent establishment of the Federal Government shall keep the Center currently informed of its programs, policies, and initiatives to improve productivity which relate to the responsibilities of the Center, and shall consult with the Center prior to the obligation or expenditure of funds for activities or projects to improve productivity growth.

**(c) Access to information.**

Each Federal department, agency, and independent establishment of the Federal Government is authorized and directed to furnish or allow access to all relevant materials and information required by the Center to carry out its functions under this chapter. (Pub. L. 94–136, title III, § 301, Nov. 28, 1975, 89 Stat. 740.)

**§ 2432. Internal review.**

Each department, agency, and independent establishment of the Federal Government, in coordination with the Center, shall study and review the promulgation and implementation of its statutory authority, policies, and regulations, and shall identify such statutes, policies, and regulations which adversely affect productivity growth in the public or private sectors of the United States, or those which impede the efficient functioning of the Nation's economy, and shall recommend to the President and the Congress, or implement where appropriate, alternative statutes, policies, and regulations which will contribute to the achievement of the purposes of this chapter. (Pub. L. 94–136, title III, § 302, Nov. 28, 1975, 89 Stat. 740.)

**§ 2433. Support of external activities.**

Each department, agency, and independent establishment of the Federal Government, in coordination with the Center, shall, to the extent appropriate, make available to State and local governments, labor organizations, industry, public institutions, and other

qualified organizations advice, information, and support, including financial and other assistance, designed to maintain, promote, and enhance sustained productivity growth in the public and private sectors of the United States. (Pub. L. 94–136, title III, § 303, Nov. 28, 1975, 89 Stat. 741.)

**§ 2434. Internal productivity.**

Each department, agency, and independent establishment of the Federal Government shall identify, develop, initiate, and support appropriate programs, systems, procedures, policies, and techniques to improve the productivity of such departments and agencies, including the implementation, where desirable, of specific programs recommended, supported, or implemented by the Center. (Pub. L. 94–136, title III, § 304, Nov. 28, 1975, 89 Stat. 741.)

**§ 2435. Other statutory obligations.**

Nothing in this subchapter affects any specific statutory obligation of any Federal agency (1) to coordinate or consult with any other Federal or State agency or (2) to act, or to refrain from acting, contingent upon the recommendations or certification of any other Federal or State agency. (Pub. L. 94–136, title III, § 305, Nov. 28, 1975, 89 Stat. 741.)

## SUBCHAPTER IV.—ADMINISTRATIVE PROVISIONS

**§ 2451. Authority of Executive Director.**

The Executive Director is authorized to—

(1) prescribe such regulations as are deemed necessary to carry out the purposes of this chapter;

(2) receive money and other property donated, bequeathed, or devised, or remitted in payment for services rendered, without condition or restriction other than that it be for the purposes of the Center;

(3) receive (and use, sell, or otherwise dispose of, in accordance with clause (2)) money or other property donated, bequeathed, or devised to the Center, except for such money and other property which includes a condition that the Center use other funds of the Center for the purpose of the gift, in which case two-thirds of the members of the Board of the Center must approve such donations;

(4) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter in accordance with the provisions of Title 5, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of Title 5, at rates for individuals not to exceed the maximum daily rate prescribed for GS–18 under section 5332 of Title 5;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem as authorized by section 5703 of Title 5;

(7) utilize, on a reimbursable or nonreimbursable basis the services, equipment, personnel, and facilities of any other department or agency of the United States;

(8) establish one or more task forces to assist and advise the Center, composed of individuals who, by reason of experience, are qualified for such service. Each member of any such task force who is not an officer or employee of the Federal Government may receive an amount not to exceed the maximum daily rate prescribed for GS–18 under section 5332 of Title 5 for each day such individual is engaged in the actual performance of duties (including traveltime) as a member of such a task force. Members may be reimbursed for travel, subsistence, and necessary expenses incurred in the performance of their duties; and

(9) make advances, progress, and other payments deemed necessary under this chapter without regard to the provisions of section 529 of Title 31.

(Pub. L. 94–136, title IV, § 401, Nov. 28, 1975, 89 Stat. 741.)

## SUBCHAPTER V.—EVALUATION BY COMPTROLLER GENERAL

**§ 2461. Audit, review, and evaluation.**

(a) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of this chapter by the Center.

(b) Not less than thirty months nor more than thirty-six months after November 28, 1975, the Comptroller General shall prepare and submit to the Congress a report on his audit conducted pursuant to subsection (a) of this section, which shall contain, but not be limited to, the following:

(1) an evaluation of the effectiveness of the Center's activities;

(2) an evaluation of the effect of the activities of the Center on the efficiency, and effectiveness, of affected Federal agencies in carrying out their assigned functions and duties under this chapter; and

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of the objectives of this chapter as set forth in section 2402 of this title.

(Pub. L. 94–136, title V, § 501, Nov. 28, 1975, 89 Stat. 742.)

## SUBCHAPTER VI.—AUTHORIZATION OF APPROPRIATIONS

**§ 2471. Authorization of appropriations.**

There are authorized to be appropriated to carry out the purposes of this chapter, not to exceed $6,250,000 for the fiscal year ending June 30, 1976, and the subsequent transition period ending September 30, 1976; not to exceed $5,000,000 for the fiscal year ending September 30, 1977; and not to exceed $5,000,000 for the fiscal year ending September 30, 1978. Funds appropriated for any fiscal year shall remain available for obligation until expended. (Pub. L. 94–136, title VII, § 701, Nov. 28, 1975, 89 Stat. 743.)